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STATE OF MISSOURI DISPARITY STUDY

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INTRODUCTION

I. OVERVIEW

The United States Supreme Court decision in *City of Richmond, VA. v. J.A. Croson Co.* signaled a turning point for local and state programs seeking to improve public contracting opportunities for minority and women-owned enterprises. The *Croson* decision outlined specific standards to ensure that any race-conscious program will be undertaken by public entities only to remedy specific and identified past discrimination.

The State of Missouri (the "State") commissioned Mason Tillman Associates, Ltd., to assess whether the requisite factual conditions exist within the State contracting system, pursuant to *Croson* guidelines, to justify a Minority and Women Business Enterprise (MBE/WBE) program.

II. GENERAL PURPOSE

The **general purpose** of the disparity study, as stated in the State's Request for Proposal (RFP), is to understand the procurement practices of all state government agencies operating under the State Purchasing Procedures¹ (and other state government agencies, at the direction of the state), and to:

- a. Evaluate the need for the development of programs to enhance the participation of MBE/WBEs in contracts and purchase orders issued pursuant to State Purchasing Procedures for the purchase of goods and services, and for construction contracts, and
- b. Address and recommend resolutions for the concerns expressed by the U.S. Supreme Court in *Croson*.

The study period is for fiscal years 1989-1994.

¹ Excepted are the University of Missouri System, the Missouri Department of Transportation, construction and capital improvement projects of the Department of Conservation, and some other small dollar purchases and special delegations.

III. SPECIFIC OBJECTIVES

The **specific objectives** for conducting the Missouri disparity study, also stated in the RFP, are to review and analyze present and past State Purchasing Procedures and contracting practices and the State's present and past utilization of MBE/WBEs. Eight objectives are required to respond to those specific requirements:

1. For all State Purchasing Procedure contracts involving the purchase of goods, services, and construction, determine the percentage of businesses owned and controlled by MBE/WBEs in Missouri and make comparisons between the state's utilization of MBE/WBEs and non-MBE/WBE firms.
2. Compare, by specific industries, the utilization of MBE/WBEs in contracts awarded pursuant to State Purchasing Procedures to the availability of MBE/WBEs in Missouri and determine if under-utilization of MBE/WBEs exist.
3. Determine whether and the extent to which Missouri's under-utilization of MBE/WBEs is the result of active or passive discrimination resulting from lingering vestiges of a discriminatory system.
4. Compare and contrast the type of industries and the percentage of contracts typically awarded pursuant to State Purchasing Procedures to MBE/WBE prime and first tier subcontractors with the types awarded to non-MBE/WBEs.
5. Determine whether and if so, the extent to which, present or past discrimination in other areas affects the participation of MBE/WBEs in State Purchasing Procedures procurement and contracting.
6. Determine if state contracting and procurement policies, regulations, procedures, and practices affect the participation of MBE/WBEs in the State Purchasing Procedures contracting process.
7. Summarize findings from above reviews and determine whether statistically significant disparity exists.
8. Based on results from the above reviews, develop detailed recommendations including race neutral remedies, if needed.

IV. APPROACH

In order to accomplish the study objectives, the study team carried out a comprehensive research project from September, 1994 through July, 1995. Research included the collection of extant State records and extensive interviews with State officials and business owners. In addition, ten public hearings were conducted to collect testimony concerning the business experiences of MBE/WBEs. Specifically, the approach included:

- *Collection of Utilization Data:* Contract records for the purchase of goods, services, and construction were collected from the State's purchasing and accounting offices.
- *Market Area Determination:* Utilization data were examined and the State's market area was determined based on where the State buys most of its goods and services.
- *Compilation of Availability Data:* State vendor lists, purchasing lists, MBE/WBE directories, and directories from private MBE/WBE advocacy groups and listings from non-MBE/WBE organizations were used to identify businesses in the State's market area with the qualifications and interest in providing the State with goods and services.
- *Compilation of Oral History Accounts:* Oral history interviews with minority and women business owners were conducted to lend insight into barriers that individual business owners have encountered in the market area. Testimonials were also collected during public hearings and analyzed as part of the anecdotal accounts.
- *Identification of Methods for Remedying any Identified Discrimination:* Where disparity was documented because of a business owner's race or gender, consideration was given to types of remedies the State should enact.

V. ORGANIZATION OF REPORT

The report detailing State of Missouri Disparity Study findings is set forth in six parts. Part One of the report presents the legal standards necessary for evaluating the constitutionality of race and gender conscious business affirmative action programs. Part Two presents the State's policies and approach to securing MBE/WBE business participation. In Part Three,

the study methodology and data sources are detailed, as a prelude to the presentation of the utilization, availability, and statistical disparity results. Part Four presents the State's social environment within which MBE/WBEs evolved, back to de-jure segregation. Current business experiences of the State's minority and women business owners are detailed in Part Five, the anecdotal section. Finally, Part Six presents methods that can be used to remedy the documented discrimination.

Part One

LEGAL FRAMEWORK OF MINORITY AND WOMEN BUSINESS ENTERPRISE PROGRAMS

I. BACKGROUND

This section discusses the state of the law applicable to affirmative action programs in the area of public contracting. Two Supreme Court decisions, *City of Richmond v. J.A. Croson Co.*² and *Adarand v. Peña*,³ raised the standard by which federal courts will review such programs. In those decisions, the Court announced that the constitutionality of affirmative action programs that employ racial classifications would be subject to "strict scrutiny." Broad notions of equity or general allegations of historical and societal discrimination against minorities would now be insufficient to meet the requirements of the Equal Protection clause of the Constitution. Instead, governments can adopt race-conscious programs only as a remedy for identified discrimination, and this remedy must pose minimal burden on unprotected classes.

An understanding of *Croson*, which applies to state and local governments, is necessary in developing sound Minority-owned Business Enterprise (MBE) and Woman-owned Business Enterprise (WBE) programs. *Adarand*, decided in June 1995, applied the strict scrutiny standard to federal programs. Its implications will not be fully appreciated until it is interpreted by lower courts. It is likely that many of the requirements arising as a result of *Croson* will impact the constraints that now apply to federal programs and federally funded state and local programs. The federal government is currently in the process of amending certain contracting programs to take into account the effects of the *Adarand* decision.

A caveat is appropriate here. Because the review under strict scrutiny is fact specific, it is difficult to predict with certainty whether evidence gathered about a particular entity, and its surrounding business community, will pass constitutional muster. Nevertheless, post-*Croson* opinions do provide guidelines on the evidence that should be adduced if race-conscious remedies are put in place. Of those, one is a Federal Court of Appeals opinion in the Third

² 488 U.S. 469 (1989).

³ 115 S.Ct. 2097 (1995).

Circuit, and two are District Court opinions. Each assessed the disparity studies in question on the merits instead of disposing of the cases on procedural issues.⁴

In the federal court system, there are primarily three levels of courts: the Supreme Court, Appellate Courts, and District Courts. The Supreme Court is the highest ranking federal court and its rulings are binding on all other federal courts. Appellate Courts' rulings are binding on all district courts in their circuit, and are used for guidance in other circuits. (Missouri is in the Eighth Circuit.) District Court rulings, while providing insight into an appropriate legal analysis, are not binding on other courts at the District, Appellate or Supreme Court levels.

II. STANDARDS OF REVIEW

The standard of review represents the basis and measure upon which a court evaluates a particular legal issue. This section discusses the standard of review that the Supreme Court set for state and local programs in *Croson* and potentially *Adarand*, and the implications for program design that arise from these decisions.

A. MINORITY BUSINESS ENTERPRISE PROGRAMS

In *Croson*, the U.S. Supreme Court affirmed that the proper standard of review for state and local programs relying on racial classifications is strict scrutiny under the 14th Amendment.⁵ Specifically, the government must show that the classification is narrowly tailored to achieve a compelling state interest.⁶ The Court recognized that a state or local entity may take action, in the form of a Minority Business Enterprise program, to rectify the effects of *identified, systemic racial discrimination* within its jurisdiction.⁷ Justice O'Connor, speaking for the majority, postulated various methods of demonstrating discrimination and set forth guidelines for crafting MBE programs so that they are "narrowly tailored" to address systemic racial discrimination.

⁴ Contractors Ass'n of E. PA. v. City of Philadelphia, 91 F.3d 586 (3d Cir.1996); Associated General Contractors of America, Inc. v. City of Columbus, C2-89-705 (S.D. Ohio August 26, 1996); and Engineering Contractors of South Florida v. Metropolitan Dade County, 94-1848-CIV-RYSKAMP (S.D. Fla. September 17, 1996).

⁵ *Croson*, 488 U.S. at 486.

⁶ *Id.*

⁷ *Id.* at 509.

While legal scholars initially debated the implications of *Croson*,⁸ the Ninth Circuit Court of Appeals has achieved some degree of harmony on *Croson*'s implications. In *Coral Construction Co. v. King County*⁹ (*Coral Construction*) and *Associated General Contractors of California v. City and County of San Francisco*¹⁰ (*AGCC II*), the Ninth Circuit elaborated on the requirements set out in *Croson*, and thus further delineated the careful specificity with which MBE and WBE programs are to be crafted. The opinions of other Circuits are generally in accord. The specific evidentiary requirements are detailed in Section IV.

The federal government is currently amending key components of its contracting rules and regulations in order to address the requirements of *Adarand*. On May 23, 1996, the Department of Justice published its Proposed Reforms to Affirmative Action in Federal Procurement for comment, and on May 9, 1997, published its response to those comments.¹¹ The reforms involve five major topics: (1) certification and eligibility; (2) benchmark limitations; (3) mechanisms for increasing minority opportunity; (4) outreach and technical assistance; and (5) the interaction of benchmark limitations and these mechanisms.¹² The proposed reform structure will form a model for amending the affirmative action provisions of the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement which address direct federal contracting.

On May 9, 1997, the Federal Acquisition Regulatory Council published for comment the proposed amendments to the Federal Acquisition Regulation that will implement the contracting mechanisms described in the Justice Department proposal. These amendments will implement Section 7102 of the Federal Acquisition Streamlining Act (FASA) and further implement 10 U.S.C. 2323 which permit federal agencies to allow competitive advantages, including price evaluation credits in awards involving small businesses owned and controlled by socially and economically disadvantaged persons (SDBs).¹³ The Small Business Administration will publish regulations that describe the new process by which firms are determined to be

⁸ See "Constitutional Scholars' Statement on Affirmative Action after *City of Richmond v. J.A. Croson Co.*," 98 *Yale Law Journal* 1711 (1989); Fried, "Affirmative Action after *City of Richmond v. J.A. Croson Co.*: A Response to the Scholars' Statement," 99 *Yale Law Journal* 155 (1989); "Scholars' Reply to Professor Fried," 99 *Yale Law Journal* 163 (1989); Rosenfeld, "Decoding Richmond: Affirmative Action and the Elusive Meaning of Constitutional Equality," 87 *Michigan Law Review* 1729 (1989); "Economics of Discrimination: Three Fallacies of *Croson*," 100 *Yale Law Journal* (1991).

⁹ 941 F.2d 910 (9th Cir. 1991), cert. denied, 112 S.Ct 875 (1992).

¹⁰ 950 F.2d 1401 (9th Cir. 1991), cert. denied, 112 S.Ct 1670 (1992). Note there are two AGCC cases, one pre-*Croson* [813 F.2d 922 (9th Cir. 1987), cited as AGCC I] and the post-*Croson* case cited here which through the remainder of the discussion is cited as AGCC II.

¹¹ 62 Fed. Reg. 25648, citing 61 Fed. Reg. 26042 (1996).

¹² 61 Fed. Reg. 26043 (1996).

¹³ 62 Fed. Reg. 25648.

SDBs.¹⁴ This process may impact M/WBE programs for State of Missouri projects which are funded with federal dollars.

Under the proposed rules, firms seeking to participate in the disadvantaged business program will have to be certified as a member of a designated minority group. Benchmark limits specifying a targeted level of minority participation will be set for each industry from which an agency purchases goods and services. These benchmarks would represent the level of minority contracting that one would reasonably expect to find in a market absent discrimination or its effects. Race-neutral mechanisms for increasing minority opportunity would include a variety of outreach and technical assistance activities designed to enhance contracting opportunities for disadvantaged businesses. Where the use of all available tools including direct competition and race-neutral outreach and recruitment efforts results in minority participation below the benchmark, race-based mechanisms will remain available. Race-conscious measures would include several race-conscious contracting mechanisms including the Small Business Administration's 8(a) program and a bidding credit for non-minority prime contractors that use disadvantaged businesses in subcontracting.

In addition, the U. S. Department of Transportation issued a Supplemental Notice of Proposed Rulemaking (SNPRM) regarding participation by Disadvantaged Business Enterprise (DBE) Department of Transportation programs. The SNPRM seeks to revise provisions of the DBE rules to respond to the decision of the U.S. Supreme Court in *Adarand*. The SNPRM's goal is to modify the program consistent with the "narrow tailoring" requirement of *Adarand* and to replace its administration of the program. The Department of Transportation is seeking comments on the SNPRM which are due by September 27, 1997.

B. WOMAN-OWNED BUSINESS ENTERPRISE, LOCAL BUSINESS ENTERPRISE, AND DISADVANTAGED BUSINESS ENTERPRISE PROGRAMS

1. Woman-Owned Business Enterprise and Local Business Enterprise Programs

Since *Croson*, the Supreme Court has remained silent with respect to the appropriate standard of review for Woman-owned Business Enterprise (WBE) and Local Business Enterprise (LBE) programs. *Croson* was limited to the review of a race conscious plan. In other contexts, though, the Supreme Court has ruled that gender classifications are not subject to the rigorous strict scrutiny standard applied to racial classifications. Instead gender classifications are subject only to an "intermediate" level of review, no matter which gender is favored.

¹⁴ Id.

Notwithstanding the Supreme Court's failure thus far to rule on a WBE program, the consensus among the Circuit Courts of Appeals is that they are subject only to this intermediate scrutiny, rather than to the more exacting strict scrutiny to which race-conscious programs are subject.¹⁵ Intermediate review requires the governmental entity to demonstrate an "important governmental objective" and a method for achieving this objective which bears a "fair and substantial relation"¹⁶ to the goal. The Court has also expressed the test as requiring an "exceedingly persuasive justification"¹⁷ for classifications based on gender.

In *Mississippi University for Women v. Hogan*, the Supreme Court acknowledged that in limited circumstances a gender-based classification favoring one sex can be justified if it intentionally and directly assists members of the sex that is disproportionately burdened.¹⁸ The Ninth Circuit in *Associated General Contractors of California v. City and County of San Francisco (AGCC I)*¹⁹ has held that classifications based on gender require an "exceedingly persuasive justification".²⁰ The justification is valid only if members of the gender benefitted by the classification actually suffer a disadvantage related to the classification and the classification does not reflect or reinforce archaic and stereotyped notions of the roles and abilities of women.²¹

The San Francisco Ordinance at issue in *AGCC I* attempted to "compensate women for the disparate treatment they have suffered in the business community and for the bureaucratic inertia in the City's contracting procedures that has perpetuated the disadvantages flowing from that treatment."²² While the Ninth Circuit recognized the objective as "plainly an important and legitimate one,"²³ it questioned "whether the means employed are substantially related to [the objective's] achievement."²⁴

¹⁵ See e.g., *Coral Construction Co. v. King County (Coral Construction)* 941F.2d 910 (9th Cir. 1991).

¹⁶ *Craig v. Boren*, 429 U.S. 119 (1986) (Powell, J. concurring).

¹⁷ *Mississippi University for Women v. Hogan*, 458 U.S. 718 (1982). See also *Michigan Road Builders Ass'n., Inc. v. Milliken*, 834 F.2d 583 (6th Cir. 1987), and *Philadelphia*, 735 F.Supp. 127 at 1300.

¹⁸ *Id.* at 728.

¹⁹ 813 F.2d 922 (9th Cir. 1987).

²⁰ *Id.*

²¹ *Id.* at 940.

²² *Id.* at 940-41.

²³ But cf., *Brunet v. City of Columbus*, 1 F. 3d 390, 404 (6th Cir. 1993); *Colin v. Blanchard*, 890 F. 2d 811 (6th Cir. 1989) (in both cases the Sixth Circuit applied the same strict scrutiny standard to sex that it did to race).

²⁴ *AGCC I*, 813 F.2d at 941 (citation omitted).

Even though the Circuit upheld the WBE program, the court was concerned by the fact that the subsidy to women was unusually broad, and that such broad preferences could actually reinforce harmful stereotypes. The court cautioned that “[t]his risk is magnified where the preferences are not accompanied by particularized findings of harm, and where they extend to areas where women have not been found to be disadvantaged.”²⁵ The court also observed that “while the City’s program may well be over-inclusive, we believe it hews closely enough to the City’s goal of compensating women for disadvantages that they have suffered so as to survive a facial challenge.”²⁶ The level of specificity for gender-based plans was considered less than that required for race-based plans. “Unlike racial classifications, which must be narrowly tailored to the government’s objective, there is no requirement that gender-based statutes be drawn as precisely as [they] might have been.”²⁷

The Ninth Circuit’s decision that “the WBE program is therefore *substantially* related to the City’s important goal of compensating women for the disparate treatment they have suffered in the market place” is not beyond reproach.²⁸ The Court acknowledged that in every industry in which women were provided preference, “[i]t is unlikely that the City could demonstrate an exceedingly persuasive justification.”²⁹ Not willing to tackle the issues, the court decided to “leave these matters to another day.”³⁰

The Third Circuit, in *Philadelphia*, ruled in 1993 that the standard of review that governs WBE programs is different than the standard imposed upon MBE programs. The Third Circuit stated that whereas MBE programs must be “narrowly tailored” to a “compelling state interest,” WBE programs must be “substantially related” to “important governmental objectives.” An MBE program would only survive constitutional scrutiny by demonstrating a pattern and practice of systemic racial exclusion or discrimination in which a state or local government was an active or passive participant.³¹

²⁵ Id.

²⁶ Id.

²⁷ Id.

²⁸ Id.

²⁹ Id.

³⁰ Id.

³¹ *Philadelphia*, 6 F.3d at 1011.

The Eleventh Circuit also applies intermediate scrutiny, *Ensley Branch N.A.A.C.P. v. Seibels*.³² The District Court in *Dade County* necessarily followed that decision, and cited favorably the Third Circuit's 1993 formulation in *Philadelphia*: "[T]his standard requires the [county] to present probative evidence in support of its stated rationale for the gender preference, discrimination against women-owned contractors."³³ However, the court queried whether the recent Supreme Court decision in *United States v. Virginia*³⁴ finding the all male program at Virginia Military Institute unconstitutional signaled a heightened level of scrutiny.

The Ninth Circuit in *Coral Construction* accords with these precedents in holding that intermediate scrutiny is the proper standard for reviewing WBE programs.³⁵ This less rigorous standard of review for a WBE, however, does not mean that disparity study analyses involving WBEs can be less rigorous than those involving MBEs. A court reviewing a WBE disparity study will still require a factual predicate showing actual discrimination within the jurisdiction and narrowly-tailored remedies designed to counteract that discrimination. As the Court in *Coral Construction* noted, some degree of discrimination must be demonstrated in a particular industry before a gender-specific remedy may be instituted in that industry. "[T]he mere recitation of a benign, compensatory purpose will not automatically shield a gender-specific program from constitutional scrutiny."³⁶ However, the Circuit held that intermediate scrutiny does not require a showing of governmental involvement, active or passive, in the discrimination it seeks to remedy.³⁷ This, of course, is required under the strict scrutiny standard of review applied to race-conscious programs.

Coral Construction also addresses the nature and scope of the remedies formulated to eradicate disparities involving WBEs. The King County Plan gave preference to women in all industries contracting with the County, even those for which there was no evidence of discrimination. The court determined in *Coral Construction* that this factor alone was insufficient to warrant invalidating the entire program. The Circuit held, however, that the WBE plan was open to challenge within each individual

³² 31 F.3d 1548, 1579 (1994).

³³ *Philadelphia*, 6 F.3d at 1010.

³⁴ 116 S.Ct. 2264 (1996).

³⁵ *Coral Construction Co.*, 941 F.2d at 931.

³⁶ *Id.* at 932.

³⁷ *Id.*

industry. With respect to the construction industry, the court concluded that the record supported a finding of discrimination against WBE firms.³⁸

2. Disadvantaged Business Enterprise Programs

Over the past decade the U.S. Department of Transportation and U.S. Department of Defense have created DBE and SDBE programs with a goal of five percent to 10 percent of the dollar amount of federal projects for businesses owned and controlled by persons said to be “economically and socially disadvantaged.” The administering agency is given the latitude and discretion to determine the level of participation as well as the means for implementing the participation. For the most part, DBE programs have functioned like the MBE programs, i.e., the goal is established in the form of percentage participation in the dollar amount of contracting opportunities by specifically designated groups, and waivers are granted if there is an absence of qualified DBEs in the relevant market.

While the concepts underlying the DBE programs do not radically differ from those of MBE or WBE programs, the courts have accorded DBE programs different treatment. If DBE programs do not include racial or ethnic factors and are limited to economic considerations, they would only have to provide a “rational basis” for the particular program design.³⁹ *Croson* and *Adarand* suggest, however, that to the extent that race and ethnicity play a part, the standard of review is likely to be a more rigorous one. Indeed, on June 2, 1997, the District Court on remand of *Adarand* held that the 8(a) program’s presumption that members of designated racial groups were socially and economically disadvantaged was constitutionally invalid.

III. BURDEN OF PROOF

The procedural protocol established by *Croson* imposes an initial burden of proof upon the government to demonstrate that the challenged MBE program is supported by a strong

³⁸ *Id.* at 932-33.

³⁹ In the first decision of the Appellate Court, the Court in *Contractors Ass’n of E. PA. v. Philadelphia*, Third Circuit took the same “rational basis” approach to disabled business owners that it has applied to legislation that does not involve race, ethnicity, the First Amendment, or gender. 6 F.3d 990 (3rd Cir. 1993). In *Philadelphia*, the Third Circuit found that the City of Philadelphia’s two percent preference for businesses owned by individuals with a disability was rationally related to its goal of encouraging such businesses to seek City contracts. The City had offered only anecdotal evidence of discrimination and the Court ruled that this was sufficient to infer discrimination against individuals with a disability. Therefore, the City was entitled to conclude the Ordinance would encourage disabled persons to form businesses and win City contracts. As the court said, “[t]he Supreme Court recently reaffirmed the permissiveness of this test in *Heller v. Doe*, 113 S. Ct. 2637, 2642-43 (1993), indicating that ‘a [statutory] classification’ subject to rational basis review ‘is accorded a strong presumption of validity,’ and that ‘a state...has no obligation to produce evidence to sustain the rationality of [the] classification.’” *Philadelphia*, 6 F.3d 990, 1011.

factual predicate. Notwithstanding this requirement, the plaintiff bears the ultimate burden of proof—to persuade the court that the MBE program is unconstitutional. The plaintiff may challenge a government’s factual predicate on any of the following grounds:

- neutral explanation for the disparity
- flawed methodology
- statistically insignificant data
- controverting data

Thus, a disparity study must be analytically rigorous—at least to the extent that the data permits—if it is to withstand legal challenge. That challenge would arise in the context of whether the MBE program was narrowly tailored in relation to the strength of the factual predicate.

A. STRONG BASIS IN EVIDENCE

Croson requires defendant jurisdictions to produce a “strong basis in evidence” that the objective of the challenged MBE program is to rectify the effects of discrimination.⁴⁰ The issue of whether or not the government has produced a strong basis in evidence is a question of law.⁴¹ Because the sufficiency of the factual predicate supporting the MBE program is at issue, factual determinations relating to the accuracy and validity of the proffered evidence underlie the initial legal conclusion to be drawn.⁴²

The adequacy of the government’s evidence is “evaluated in the context of the breadth of the remedial program advanced by the [jurisdiction].”⁴³ The onus is upon the jurisdiction to provide a factual predicate which is sufficient in scope and precision to demonstrate that contemporaneous discrimination necessitated the adoption of the MBE program. The various factors which must be considered in developing and demonstrating a strong factual predicate in support of MBE programs are discussed in Section IV.

⁴⁰ *Concrete Works of Colorado v. City & County of Denver*, 36 F.3d 1513, 1522 (10th Cir. 1994).

⁴¹ *Id.* (citing *Associated General Contractors v. New Haven*, 791 F.Supp. 941, 944 (D.Conn. 1992)).

⁴² *Id.*

⁴³ *Id.* (citing *Croson* at 498.)

B. ULTIMATE BURDEN OF PROOF

The party challenging an MBE program will bear the ultimate burden of proof throughout the course of the litigation—despite the government’s obligation to produce a strong factual predicate to support its program.⁴⁴ The plaintiff must persuade the court that the program is constitutionally flawed by challenging the adequacy of the government’s factual predicate for the program or demonstrating that the program is overly broad.

Justice O’Connor explained the nature of the burden of proof borne by the plaintiff in her concurring opinion in *Wygant v. Jackson Board of Education (Wygant)*.⁴⁵ She states that following the production of the factual predicate supporting the program:

[I]t is incumbent upon the non-minority [plaintiffs] to prove their case; they continue to bear the ultimate burden of persuading the court that the [government’s] evidence did not support an inference of prior discrimination and thus a remedial purpose, or that the plan instituted on the basis of this evidence was not sufficiently “narrowly tailored.”⁴⁶

In *Philadelphia*, the Third Circuit clarified this allocation of the burden of proof and the constitutional issue of whether facts constitute a “strong basis” in evidence.⁴⁷ That court wrote that the significance of the allocation of the burden of persuasion depends on the theory of constitutional invalidity that is being considered.⁴⁸ If the plaintiff’s theory is that an agency has adopted race-based preferences with a purpose other than remedying past discrimination, the plaintiff has the burden of convincing the court that the identified remedial motivation is a pretext and that the real motivation was something else.⁴⁹

The situation is different if the plaintiff’s theory is that an agency’s conclusions with respect to the existence of discrimination and the necessity of the remedy chosen have no strong basis in evidence. In such a situation, once the agency comes forward with evidence of facts alleged to justify its conclusions, the plaintiff has the burden of persuading the court that those facts are not accurate. However, the ultimate issue

⁴⁴ Id. (citing *Wygant v. Jackson Board of Education*, 476 U.S. 267, 277-278 (1986)).

⁴⁵ *Wygant*, 476 U.S. 267, 293 (1986).

⁴⁶ Id.

⁴⁷ *Philadelphia*, 91 F.3d 597.

⁴⁸ Id.

⁴⁹ Id.

of whether a strong basis in evidence exists is an issue of law, and the burden of persuasion in the traditional sense plays no role in the court's resolution of that ultimate issue.

IV. CROSON EVIDENTIARY FRAMEWORK

Government entities must construct a strong evidentiary framework to stave off legal challenges and ensure that the adopted M/WBE programs comport with the requirements of the Equal Protection clause of the Constitution. The framework must be built based on the stringent requirements of the strict scrutiny standard that there is a strong basis in evidence and that a race conscious remedy is "narrowly tailored," as set forth in *Croson*. A summary of the critical elements follows.

A. ACTIVE OR PASSIVE PARTICIPATION

Croson requires that the local entity seeking to adopt an MBE program must have somehow perpetuated the discrimination to be remedied by the program. However, the local entity need not be an active perpetrator of such discrimination; passive participation will satisfy this part of the Court's strict scrutiny review.

An entity will be considered to be an "active" participant if the evidence shows that it has created barriers that actively exclude MBEs from contracting opportunities. In addition to examining the government's contracting process, MBEs who have contracted, or attempted to contract, with that entity can be interviewed to determine their experiences in pursuing contracting opportunities with that entity.

On the other hand, if discriminatory practices can be shown in the private sector, an entity can demonstrate that it is a "passive" participant in a private system of discriminatory exclusion where it infuses tax dollars into that discriminatory industry.⁵⁰ As the Court said in *Croson*: "It is beyond dispute that any public entity, state or federal, has a compelling interest in assuring that public dollars, drawn from tax contributions of all citizens, do not serve to finance the evil of private prejudice."⁵¹

Increasingly, this inquiry has focused on the subcontracting practices of government prime contracts. Since no government funds were involved in *Concrete Works*, the

⁵⁰ *Croson*, 488 U.S. at 492; *Coral Construction*, 941 F.2d at 916.

⁵¹ *Croson*, 488 U.S. at 492.

Tenth Circuit questioned whether purely private sector discrimination is likely to be a fruitful line of inquiry.⁵² In *Philadelphia*, the Court of Appeals' evaluation of the merits of that disparity study treated "passive participation" as being the same thing as discriminatory subcontracting practices on City contracts.⁵³

B. SYSTEMIC DISCRIMINATORY EXCLUSION

Croson clearly establishes that an entity enacting a business affirmative action program must demonstrate identified, systemic discriminatory exclusion on the basis of race or any other suspect criteria (arguably gender).⁵⁴ Simple statistics and broad assertions of societal discrimination will not suffice to support a race- or gender-conscious program. Thus, it is essential to demonstrate a pattern and practice of such discriminatory exclusion in the relevant market area to establish the necessary factual predicate required by *Croson*.⁵⁵ That showing must cover each racial group to whom a remedy would apply.⁵⁶

Croson enumerates several ways an entity can establish the requisite factual predicate. First, a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service, and the number of such contractors actually engaged by an entity or by the entity's prime contractors may support an inference of discriminatory exclusion.⁵⁷ In other words, when the relevant statistical pool is used, a showing of gross statistical disparity alone may constitute prima facie proof of a pattern or practice of discrimination.⁵⁸

⁵² Concrete Works, 36 F.3d at 1529. "What the Denver MSA data does not indicate, however, is whether there is any linkage between Denver's award of public contracts and the Denver MSA evidence of industry-wide discrimination. That is, we cannot tell whether Denver indirectly contributed to private discrimination by awarding public contracts to firms that in turn discriminated against MBE and/or WBE subcontractors in other private portions of their business or whether the private discrimination was practiced by firms who did not receive any public contracts. Neither *Croson* nor its progeny clearly state whether private discrimination that is in no way funded with public tax dollars can, by itself, provide the requisite strong basis in evidence necessary to justify a municipality's affirmative action program. A plurality in *Croson* simply suggested that remedial measures could be justified upon a municipality's showing that 'it had essentially become a "a passive participant" in a system of racial exclusion practiced by elements of the local construction industry.' [citing *Croson*] Although we do not read *Croson* as requiring the municipality to identify an exact linkage between its award of public contracts and private discrimination, such evidence would at least enhance the municipality's factual predicate for a race- and gender-conscious program. The record before us does not explain the Denver government's role in contributing to the underutilization of MBPS and WBEs in the private construction market in the Denver MSA, and this may well be a fruitful issue to explore at trial."

⁵³ *Philadelphia*, 91 F.3d 586, 599-601 (3rd Cir. 1996).

⁵⁴ *Croson*, 488 U.S. at 509.

⁵⁵ *Id.*

⁵⁶ As the Court said in *Croson*, "[t]he random inclusion of racial groups that, as a practical matter, may never have suffered from discrimination in the construction industry in Richmond suggests that perhaps the city's purpose was not in fact to remedy past discrimination." *Id.* at 506.

⁵⁷ *Id.* at 509.

⁵⁸ *Id.* at 501 (citing *Hazelwood School District v. United States*, 433 U.S. 299, 307-308 (1977)).

Such a showing should include subcontracting data. The Court observed in *Croson* that “[w]ithout any information on minority participation in subcontracting, it is quite simply impossible to evaluate overall minority representation in the city’s construction expenditures.”⁵⁹ Subcontracting data is also important as a means to assess future remedial suggestions. Since the decision makers are different for the awarding of prime and subcontracts, the remedies for discrimination identified at a prime versus subcontractor level might also be different.

Second, “evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government’s determination that broader remedial relief is justified.”⁶⁰ Thus, if an entity has anecdotal evidence before it that non-minority contractors are systematically excluding minority businesses from subcontracting opportunities, it may act to end the discriminatory exclusion.⁶¹ Once an inference of discriminatory exclusion arises, the entity may act to dismantle the closed business system.

The Ninth Circuit, in *Coral Construction*, further elaborated upon the type of evidence needed to establish the factual predicate that justifies a race-conscious remedy. The Court held that both statistical and anecdotal evidence should be relied upon in establishing systemic discriminatory exclusion in the relevant marketplace as the factual predicate for an MBE program.⁶² The Court explained that statistical evidence, standing alone, often does not account for the complex factors and motivations guiding contracting decisions, many of which may be entirely race neutral.⁶³

Likewise, anecdotal evidence, standing alone, is unlikely to establish a systemic pattern of discrimination.⁶⁴ Nonetheless, anecdotal evidence is important because the individuals who testify about their personal experiences bring “the cold numbers convincingly to life.”⁶⁵

⁵⁹ Id. at 502-03.

⁶⁰ Id. at 509.

⁶¹ Id.

⁶² *Coral Construction*, 941 F.2d at 919.

⁶³ Id.

⁶⁴ Id.

⁶⁵ Id. (quoting *International Brotherhood of Teamsters v. United States (Teamsters)*, 431 U.S. 324, 339 (1977)).

1. Market Participation

While *Croson* did not speak directly to the geographic boundaries or limitations of M/WBE programs, the Ninth Circuit in *Coral Construction* ruled that an MBE program must also be limited to the geographical boundaries of the enacting jurisdiction.⁶⁶ In defining eligibility, an entity crafting an M/WBE program must be careful not to sweep into its scope M/WBEs who have never had contact with the entity's business community.⁶⁷ In *Concrete Works*, the Tenth Circuit specifically approved the Denver MSA as the appropriate market area since 80 percent of the construction contracts were let there.⁶⁸

Eligibility is a question of business participation, not location.⁶⁹ If systemic discrimination is shown in the geographic area where the entity enacting the M/WBE program does business, then there is a presumption that an M/WBE who entered the business market in that area has been victimized by the discrimination.⁷⁰ However, before the presumption attaches to an M/WBE, it must be established that the M/WBE is, or has attempted to become, an active participant in the local business community.⁷¹

In *Coral Construction*, for example, the Ninth Circuit held that the definition of "minority business" used in King County's MBE program was over-inclusive.⁷² The Court reasoned that the definition was over-broad because it included businesses other than those who were discriminated against in the King County business community.⁷³ The program would have allowed, for instance, participation by MBEs who had no prior contact with the County. Hence, location within the geographic area is not enough. An MBE must show that it previously sought business, or is currently doing business in the market area.

⁶⁶ Id. at 925.

⁶⁷ Id.

⁶⁸ *Concrete Works*, 823 F.Supp. 821, 835-836 (D.Colo. 1993); *rev'd on other grounds*, 36 F.3d 1513 (10th Cir. 1994).

⁶⁹ *Coral Construction*, 941 F.2d at 925.

⁷⁰ Id.

⁷¹ Id.

⁷² *Coral Construction*, 941 F.2d at 925.

⁷³ Id.

2. Current versus Historical Evidence

In assessing the existence of identified discrimination, through demonstration of a disparity between M/WBE utilization and availability, it is important to examine disparity data both prior to and after the entity's current M/WBE program was enacted. This will be referred to as "pre-program" versus "post-program" data.

On the one hand, *Croson* requires that an MBE program be narrowly tailored to remedy current evidence of discrimination.⁷⁴ Thus, goals must be set according to the evidence of disparity found. For example, if there is a current disparity between the percentage of an entity's utilization of Hispanic construction contractors and the availability of Hispanic construction contractors in that entity's marketplace, then that entity can set a goal to bridge that disparity.

It is not mandatory to examine a long history of an entity's utilization to assess current evidence of discrimination. (In fact, *Croson* indicates that it may be legally fatal to justify an M/WBE program based upon evidence that is outdated.⁷⁵) Therefore, the most recent two or three years of an entity's utilization data would suffice to determine whether a statistical disparity exists between current M/WBE utilization and availability.⁷⁶

On the other hand, data regarding an entity's utilization of M/WBEs prior to enacting an M/WBE program may be relevant to assessing the need for the agency to keep such a program intact. An opinion by Judge Henderson of the U.S. District Court for the Northern District of California, in *RGW Construction v. San Francisco Bay Area Rapid Transit District (BART)*,⁷⁷ sets forth the significance of statistical data during an entity's "pre-program" years. The Court ruled that statistics that provide data on a period when no M/WBE goals were operative are often the most relevant data in evaluating the need for remedial action by an entity. Indeed, "to the extent that the most recent data reflect the impact of operative DBE goals, then such data are not necessarily a reliable basis for concluding that remedial action is no longer warranted."⁷⁸ The Court noted that this is particularly so given that M/WBEs report that they are seldom or never used by a majority prime contractor absent M/WBE goals.

⁷⁴ *Croson*, 488 U.S. at 507.

⁷⁵ *Id.* at 499 (stating that "[i]t is sheer speculation how many minority firms there would be in Richmond absent past societal discrimination").

⁷⁶ See AGCC II, 950 F.2d at 1401 (consultant study looked at City's MBE utilization over a one year period).

⁷⁷ See November 25, 1992 Order by Judge Thelton Henderson.

⁷⁸ *Id.*

Thus, an entity should look both at pre-program and post-program data in assessing whether discrimination exists currently and whether it would exist absent an M/WBE program.

3. Statistical Evidence

In determining whether the statistical evidence is adequate to give rise to an inference of discrimination, courts have looked to the “disparity index.” The disparity index reflects the percentage of minority (or women) contractor participation in local contracts divided by the percentage of available minority (or women) contractors or the composition of available firms in the local market area. Disparity indexes have been found to be highly probative evidence of discrimination where they ensure that the “relevant statistical pool” of minority (or women) contractors is being considered.

The Third Circuit in *Philadelphia*, ruled that the “relevant statistical pool” includes those businesses that not only exist in the marketplace, but that are qualified and interested in performing work for the entity in question. In that case, the Third Circuit rejected a statistical disparity in which the pool of minority businesses used in comparing utilization to availability were those merely licensed to operate in the City of Philadelphia. Because being merely licensed to do business with the City does not indicate either a willingness or capability to do work for the City, the Third Circuit concluded that the statistical disparity did not satisfy *Croson*.⁷⁹

Although there has been no clear articulation of a capacity test that must be applied in determining availability, a number of courts, including the U.S. Supreme Court, a federal appellate court, and two district courts, have articulated what would be included in such an examination under particular circumstances.

In *Croson*, the Supreme Court stipulated that the government must show evidence of qualified, available businesses to perform its contracts.⁸⁰ While ability or “capacity” has been a ripe issue in subsequent cases, the *Croson* decision presents no comprehensive methodology of variables that define capacity. Thus, following *Croson*, researchers must carefully examine whether there is data that shows that MBE’s are willing and able to perform.

In *Philadelphia*, the only appellate decision concerning capacity, the court stated that it is correct to focus on the minority population capable of performing the relevant

⁷⁹ *Philadelphia*, 91 F. 3d at 603. The courts have not spoken to the non-M/WBE component of the disparity index. However, if only as a matter of logic, the ‘availability’ of non-M/WBEs requires that their willingness to be government contractors be established. The same measures used to establish the interest of M/WBEs should be applied to non-M/WBEs.

⁸⁰ 488 U.S. 469 (1989).

work when performing a statistical analysis.⁸¹ The court relied on the *Croson* case, finding that comparisons to the general population are not adequate when judging the capacity required to fill particular jobs. The court in *Philadelphia* continued by stating that,

The issue of qualifications can be approached at different levels of specificity, however, and some consideration of the practicality of various approaches is required. An analysis is not devoid of probative value simply because it may theoretically be possible to adopt a more refined approach.⁸²

In addition, the court found that studies taking into account minority contractors' qualifications through the use of a program certifying MBEs for federal construction programs can satisfy the determination of capability of those firms included in the study. The certification program, in that case, required potential firms to detail their bonding capacity, prior experience, the size of prior contracts, number of employees, financial integrity, and equipment owned before being qualified to bid on federally funded city contracts as an MBE.⁸³ The court found that "the process by which the firms were certified appears to suggest that, as a general proposition, those firms were both qualified and willing to participate in public works projects."⁸⁴ In addition, the court not only found the process to be adequate, but the certification was too conservative, possibly even "under inclusive in terms of firms capable of performing some portion of City projects."⁸⁵

Based on the court's statements, a certification process which reviews the qualifications of an MBE applying for certification would be a sufficient measure for judging the capability of firms when determining the available pool of MBEs to be included in a disparity study.

Two other cases, both decided in federal district courts, *Columbus* and *Dade County*, each subjected disparity analyses based on the dollars received to rigorous scrutiny of the capacity of firms to perform large contracts, reiterating the view in *Concrete Works* that consideration must be made of the usually smaller size and less

⁸¹ 91 F.3d 603 (1996).

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Philadelphia* at 603.

⁸⁵ *Id.*

experienced M/WBEs when judging their capacity to be available for projects.⁸⁶ Therefore, the consideration of capacity is necessary when assessing large contracts.

Taken together, these cases indicate that there needs to be an examination of whether M/WBEs included in a study's market area are willing and able to perform, with the baseline determination focusing on capacity when bidding is a means of selection and the contracts are large.⁸⁷ Including firms that have been certified as M/WBEs through a process that reviews their ability to perform is an adequate measure of capacity.⁸⁸

Whether a disparity index supports an inference that there is discrimination in the market not only turns on what is being compared, but also on whether any disparity is statistically significant. In *Croson*, Justice O'Connor opined, "[w]here the gross statistical disparities can be shown, they alone, in a proper case, may constitute a *prima facie* proof of a pattern or practice of discrimination." However, the Court has not assessed nor attempted to cast bright lines for determining if a disparity index is sufficient to support an inference of discrimination. Rather, the analysis of the disparity index and the finding of its significance are judged on a case by case basis.⁸⁹ Given these cases, it is recommended that the determination of "availability" start with bidding – where that is the method of selection – but that it also include those firms that have indicated their willingness to do business with the jurisdiction before or during the study. There also needs to be a measurement of capacity.

4. Anecdotal Evidence

Anecdotal evidence should be gathered demonstrating that minority contractors are systematically being excluded from contracting opportunities in the relevant market area. The following types of anecdotal evidence have been presented, and relied upon by the Ninth Circuit, in both *Coral Construction* and *AGCC II*, to justify the existence of an M/WBE program:

⁸⁶ Associated General Contractors of America, Inc. v. City of Columbus, No. C2-89-705 slip op. at 49 (S.D. Ohio August 26, 1996); Engineering Contractors of South Florida v. Metropolitan Dade County, No. 94-1848-CIV-RYSKAMP slip op. at 33 (S.D. Fla. September 17, 1996); Concrete Works of Colorado v. City & Cty. Of Denver, 36 F.3d 1513, 1528 (10th Cir. 1994).

⁸⁷ *Croson* at 509.

⁸⁸ *Philadelphia* at 603.

⁸⁹ *Concrete Works*, 36 F.3d at 1522.

- M/WBEs' inability to obtain contracts for private sector work – *Coral Construction*⁹⁰ existence of a good old boy network – *AGCC II*
- M/WBEs denied contracts despite being the low bidder – *AGCC II*
- M/WBEs told they were not qualified although they were later found to be qualified when evaluated by outside parties – *AGCC II*
- M/WBEs being refused work even after they were awarded the contract as low bidder – *AGCC II*
- M/WBEs being harassed by an entity to discourage them from bidding on entity's contracts – *AGCC II*

To be relevant, anecdotal accounts should relate to the geographical area to be studied and should not be too remote in time.⁹¹

Remedial measures fall along a sliding scale determined by their intrusiveness on non-targeted groups. At one end of the spectrum are race-neutral measures and policies such as outreach to the M/WBE community. Set-asides are at the other end of the spectrum. Race-neutral measures, by definition, are accessible to all segments of the business community regardless of race. They are not intrusive, and in fact, require no evidence of discrimination before implementation. On the other hand, race-conscious measures such as set-asides fall at the other end of the spectrum and require a larger amount of evidence.⁹²

Courts must assess the extent to which relief disrupts settled "rights and expectations" when determining the appropriate corrective measures.⁹³ It is likely that courts would look with more favor upon anecdotal evidence which supports a less intrusive program than a more intrusive one. For example, if anecdotal accounts related experiences of discrimination in obtaining bonds this may be sufficient evidence to support a bonding program that assists M/WBEs. However, these

⁹⁰ For instance, the Ninth Circuit upheld a finding of discriminatory exclusion of women in the private sector where the evidence demonstrated that, in addition to a general discriminatory attitude towards women-owned businesses by the private sector in the relevant locality, only a small percentage of a WBE's business came from private contracts and most of its business comes from race- or gender-based programs. *Coral Construction* at 933 (WBEs' affidavit indicated that less than 7 percent of the firm's business came from private contracts and that most of its business resulted from gender-based set-asides).

⁹¹ *AGCC v. Columbus*, C2-89-705 (S.D. Ohio August 26, 1996).

⁹² Cf. *Assoc. Gen'l Contr. of California v. Coalition for Economic Equity* at 1417-1418 (in finding that an ordinance providing for bid preferences was narrowly tailored, the Ninth Circuit stated that the program encompassed the required flexibility and stated that "the burdens of the bid preferences on those not entitled to them appear relatively light and well distributed . . . In addition, in contrast to remedial measures struck down in other cases, those bidding have no settled expectation of receiving a contract. [Citations omitted.]")

⁹³ *Wygant*, 476 U.S. at 283.

accounts would not be evidence of a statistical availability that would justify a racially limited program such as a set-aside.

As noted above, in *Croson*, the Supreme Court found that Richmond's MBE program was unconstitutional because the City lacked proof that race-conscious remedies were justified. However, the Court opined that "evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government's determination that broader remedial relief is justified. See *Teamsters*, 431 U.S. at 338."⁹⁴

In part, it was the absence of such evidence that proved lethal to the program. The Supreme Court stated that "[t]here was no direct evidence of race discrimination on the part of the city in letting contracts or any evidence that the city's prime contractors had discriminated against minority-owned subcontractors."⁹⁵

This was not the situation confronting the Ninth Circuit in *Coral Construction*. There, the 700-plus page appellate record contained the affidavits of "at least 57 minority or women contractors, each of whom complains in varying degree of specificity about discrimination within the local construction industry . . . These affidavits certainly suggest that ongoing discrimination may be occurring in much of the King County business community."⁹⁶ Nonetheless, this anecdotal evidence standing alone was insufficient to justify King County's MBE program because "[n]otably absent from the record, however, is *any* statistical data in support of the County's MBE program."⁹⁷ After noting the Supreme Court's reliance on statistical data in Title VII employment discrimination cases, and cautioning that statistical data must be carefully used, the Circuit elaborated on its mistrust of pure anecdotal evidence:

Unlike the cases resting exclusively upon statistical deviations to prove an equal protection violation, the record here contains a plethora of anecdotal evidence. However, anecdotal evidence, standing alone, suffers the same flaws as statistical evidence. Indeed, anecdotal evidence may even be less probative than statistical evidence in the context of proving discriminatory patterns or practices.⁹⁸

⁹⁴ *Croson*, 488 U.S. at 509.

⁹⁵ *Id.* at 480.

⁹⁶ *Coral Construction*, 941 F.2d at 917-918.

⁹⁷ *Id.* at 918 (emphasis supplied) (additional statistical evidence gathered after the program had been implemented was also considered by the court and the case was remanded to the lower court for an examination of the factual predicate).

⁹⁸ *Id.* at 919.

The Court concluded its discourse on the potency of anecdotal evidence in the absence of a statistical showing of disparity by observing that “rarely, if ever, can such evidence show a systemic pattern of discrimination necessary for the adoption of an affirmative action plan.”⁹⁹

Two other Circuits also suggested that anecdotal evidence might be dispositive, while rejecting it in the specific case before them. Thus, speaking in *Contractors Ass’n*, the Third Circuit noted that the Philadelphia City Council had “received testimony from at least fourteen minority contractors who recounted personal experiences with racial discrimination,” which the district court had “discounted” because it deemed this evidence to be “impermissible” for consideration under *Croson*.¹⁰⁰ The Circuit deplored the district court’s actions because in its view the court’s rejection of this evidence betrayed the court’s role in disposing of a motion for summary judgment.¹⁰¹ “Yet,” the Circuit mused,

given *Croson*’s emphasis on statistical evidence, even had the district court credited the City’s anecdotal evidence, we do not believe this amount of anecdotal evidence is sufficient to satisfy strict scrutiny [quoting *Coral*, supra]. Although anecdotal evidence alone may, in an exceptional case, be so dominant or pervasive that it passes muster under *Croson*, it is insufficient here.¹⁰²

Similarly, although echoing the Ninth Circuit’s acknowledgment of the rare case in which anecdotal evidence is singularly potent, in *O’Donnell Construction v. District of Columbia (O’Donnell)* the D.C. Circuit has ruled flatly, in the face of conflicting statistical evidence of disparity, that anecdotal evidence alone can never carry the day:

It is true that in addition to statistical information, the Committee received testimony from several witnesses attesting to problems they faced as minority contractors. Much of the testimony related to bonding requirements and other structural impediments any firm would have to overcome, no matter what the race of its owners. The more specific testimony about discrimination by white firms could not in itself support an industry-wide remedy [quoting *Coral*, supra]. Anecdotal evidence is most useful as a supplement to strong

⁹⁹ Id.

¹⁰⁰ Philadelphia, 6 F.3d 990, 1002.

¹⁰¹ Id. at 1003.

¹⁰² Id.

statistical evidence – which the Council did not produce in this case.¹⁰³

The Tenth Circuit in *Concrete Works* described the type of anecdotal evidence that is most compelling: evidence within a statistical context. In approving of the anecdotal evidence that the City of Denver had marshaled in the proceedings below, the Circuit observed that “[w]hile a factfinder should accord less weight to personal accounts of discrimination that reflect isolated incidents, anecdotal evidence of a municipality’s institutional practices carry more weight due to the systemic impact that such institutional practices have on market conditions.”¹⁰⁴ The Court noted that the city had provided such systemic evidence.

The Ninth Circuit has articulated what it deems to be permissible anecdotal evidence in *AGCC II*.¹⁰⁵ There, the Circuit approved a “vast number of individual accounts of discrimination” which included numerous reports of MBEs being denied contracts despite being the low bidder, MBEs being told they were not qualified although they were later found qualified when evaluated by outside parties, MBEs being refused work even after they were awarded the contracts as low bidder, and MBEs being harassed by city personnel to discourage them from bidding on city contracts. On appeal, the City points to numerous individual accounts of discrimination to substantiate its findings that discrimination exists in the city’s procurement processes, that an “old boy network” still exists, and that racial discrimination is still prevalent within the Pasadena construction industry.¹⁰⁶ Based on *AGCC II*, it would appear that the Ninth Circuit’s standard for acceptable anecdotal evidence is more lenient than other Circuits which have considered the issue.

Taken together, these statements constitute a taxonomy of appropriate anecdotal evidence. The cases suggest that, to be optimally persuasive, anecdotal evidence must satisfy six particular requirements. These requirements are that the accounts:

- be gathered from minority contractors, preferably those that are “qualified”;
- concern specific, verifiable instances of discrimination;
- involve the actions of governmental officials;
- involve events within the relevant jurisdiction’s market area;

¹⁰³ 963 F.2d 420 (D.C. Cir.1992)

¹⁰⁴ *Concrete Works*, 36 F.3d at 1530.

¹⁰⁵ 950 F.2d at 1401.

¹⁰⁶ *Id.* at 1415.

- discuss the harm that the improper conduct has inflicted on the businesses in question; and
- collectively reveal that discriminatory exclusion and impaired contracting opportunities are systemic rather than isolated or sporadic.¹⁰⁷

Given that no *Croson* cases identify the circumstances under which anecdotal evidence alone will carry the day, it is not surprising that none of these cases explicate bright line rules specifying the quantity of anecdotal evidence needed to support a race-conscious remedy. However, the foregoing cases, and others, provide some guidance by implication.

Philadelphia makes clear that 14 accounts will not suffice¹⁰⁸ while *Associated General Contractors of Connecticut v. New Haven*,¹⁰⁹ suggests that 15 will not do. While the matter is not free of countervailing considerations, 57 accounts, many of which appeared to be of the type called for above, were insufficient to justify the program in *Coral Construction*. The number of anecdotal accounts relied on by the district court in approving Denver's M/WBE program in *Concrete Works* is unclear, but by one count the number might have exceeded 139.¹¹⁰ It is, of course, a matter of speculation how many of these accounts were indispensable to the court's approval of the Denver M/WBE program.

In addition, as noted above, the quantum of anecdotal evidence that a court would likely find acceptable may depend on the remedy in question. The remedies that are least burdensome to non-targeted groups would likely require a lesser degree of evidence. Those remedies that are more burdensome on the non-targeted groups would require a stronger factual basis likely extending to verification.

¹⁰⁷ Or, in the words of the Third Circuit, the anecdotal evidence must be "dominant or pervasive." *Philadelphia*, 6 F.3d at 1003.

¹⁰⁸ *Id.* at 1002-03.

¹⁰⁹ 791 F.Supp. 941, 947 (D.Conn.1992).

¹¹⁰ The Denver City Council enacted its M/WBE ordinance in 1990. The program was based on the results of public hearings held in 1983 and 1988 at which numerous people testified (approximately 21 people and at least 49 people, respectively), and on a disparity study performed in 1990. See 823 F.Supp. at 833-34. The disparity study consultant examined all of this preexisting data, presumably including the anecdotal accounts from the 1983 and 1988 public hearings, as well as the results of its own 69 interviews, in preparing its recommendations. *Id.* at 833-34. Thus, short of analyzing the record in the case, it is not possible to determine a minimum number of accounts because it is not possible to ascertain the number of consultant interviews and anecdotal accounts that are recycled statements or statements from the same people. Assuming no overlap in accounts, however, and also assuming that the disparity study relied on prior interviews in addition to its own, the number of M/WBEs interviewed in this case could be as high as 139, and, depending on the number of new people heard by the Denver Department of Public Works in March 1988 (see *id.* at 833), the number might have been even greater.

V. CONSIDERATION OF RACE-NEUTRAL OPTIONS

A remedial program must address the source of the disadvantage faced by minority- or woman-owned businesses. If it is found that race discrimination places MBEs at a competitive disadvantage, an MBE program may seek to counteract the situation by providing MBEs with a counterbalancing advantage.¹¹¹

On the other hand, an M/WBE program cannot stand if the sole barrier to minority or woman business participation is a barrier which is faced by all new businesses, regardless of ownership.¹¹² If the evidence demonstrates that the sole barrier to M/WBE participation is that M/WBE's disproportionately lack capital, or cannot meet bonding requirements, then only a race-neutral program of financing for all small firms would be justified.¹¹³ In other words, if the barriers to minority participation are race-neutral, then the program must be race-neutral or contain race-neutral aspects.¹¹⁴ If the barriers appear race related, but are not systemic, then the remedy should be aimed at the specific arena in which exclusion or disparate impact has been found.

If the evidence shows that in addition to capital and bonding requirements, which are race-neutral, M/WBEs also face race discrimination in the awarding of contracts, then a race-conscious program will stand, so long as it also includes race-neutral measures to address the capital and bonding barriers.¹¹⁵

In *Columbus*, the district court required that programs be specifically intended to benefit M/WBEs and other small or disadvantaged business enterprises in order to be considered race neutral efforts.¹¹⁶

However, the Ninth Circuit in *Coral Construction* ruled that there is no requirement that an entity exhaust every possible race-neutral alternative.¹¹⁷ Instead, an entity must make a serious, good faith consideration of race-neutral measures in enacting an MBE program. Thus, in assessing low MBE utilization, it is incumbent to examine barriers to MBE participation that go beyond "small business problems." The impact on the distribution of

¹¹¹ AGCC II, 950 F.2d at 1401.

¹¹² *Croson*, 488 U.S. at 508.

¹¹³ *Id.* at 507.

¹¹⁴ *Coral Construction*, 941 F.2d at 922-923.

¹¹⁵ *Id.* (upholding MBE program where it operated in conjunction with race-neutral measures aimed at assisting all small businesses).

¹¹⁶ *Columbus* at 165.

¹¹⁷ *Id.*

contracts of programs that have been implemented to improve MBE utilization should also be measured.

VI. CONCLUSION

As explained above, the decision of the U.S. Supreme Court in the *Croson* case changed the landscape of business affirmative action programs, and altered the ability of state and local public entities to institute remedial programs in the area of public contracting.

The implications of the *Adarand* decision, which applied the strict scrutiny standard to federal programs, will not be fully appreciated until interpreted by lower courts.

It has been purpose of this study, from a legal standpoint, to examine the conditions that exist in the market area within which the State of Missouri operates, and to determine from an analysis of those conditions whether, pursuant to the *Croson* standard, the conditions justify the continuation of a race-conscious affirmative action program on the part of the State of Missouri.

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Part Two

MISSOURI'S MINORITY BUSINESS DEVELOPMENT PROGRAMS

Three state agencies administer minority business enterprise programs: the Department of Economic Development, the Office of Administration, and the Department of Revenue. The Department of Economic Development administers minority business development services. This department provides technical assistance for business operations and advocates support for minority businesses among state and federal agencies operating in Missouri.

MBE/WBE procurement and contracting programs are administered by the Office of Administration and the Department of Revenue. The Office of Administration is responsible for administering most of the State's construction and procurement contracts. The Department of Revenue performs contracting and procurement services for the State Lottery and administers the Lottery's MBE/WBE program goals. These aspects are summarized below.

<i>Administrating Agency</i>	<i>Programs</i>	<i>Description</i>
<i>Department of Economic Development</i>	• <i>Minority Business Advocacy Commission</i>	– <i>Technical Assistance</i> – <i>Training</i>
	• <i>Office of Minority Business</i>	– <i>Financial Assistance</i> – <i>Advice and Counsel</i> – <i>Advocacy</i>
<i>Office of Administration (under the Code of Fair Practices)</i>	• <i>Division of Purchasing's Minority Purchasing Unit</i>	– <i>Technical Assistance</i> – <i>Education and Training</i> – <i>Referrals</i> – <i>Outreach</i>
	• <i>Division of Design and Construction</i>	– <i>MBE Utilization Goals</i> – <i>Outreach</i>
<i>Department of Revenue</i>	• <i>The State Lottery's Minority and Woman Business Enterprise Program</i>	– <i>MBE Utilization Goals</i> – <i>WBE Utilization Goals</i>

This section will review the legislative basis and provide details of program goals, elements, and implementation strategies for each agency's program.

I. DEPARTMENT OF ECONOMIC DEVELOPMENT

The State's minority business development programs, the Office of Minority Business and the Missouri Minority Business Advocacy Commission, are housed in the Department of Economic Development. The two programs operate in tandem to provide minority and woman owned businesses with direct assistance for business development and to advocate for MBE/WBEs among state and federal agencies. A discussion of the origins and scope of Missouri's minority business development programs follows.

A. LEGISLATIVE HISTORY FOR STATE MINORITY BUSINESS DEVELOPMENT PROGRAMS

The first legislative act to create a minority business development program was adopted in 1985. Senate Bill 468 established the Office of Minority Business Development within the Office of Administration. Pursuant to the provisions of the bill, the Governor appointed a Commission on Minority Business Development to oversee and administer the Office's primary objective – to stimulate entrepreneurial opportunities for minority-owned businesses. The Commission's duties included technical and financial assistance, outreach, advocacy, and utilization analysis. Throughout its eight-year tenure (1985-1993), the Commission disseminated regular reports discussing issues affecting the contracting abilities of MBE/WBEs. The reports examined state contract awards, reviewed pending and recently enacted legislation, summarized M/WBE bidding activity, and issued recommendations for improvements to the status quo.¹¹⁸

In 1988, the Office of Minority Business was established within the Department of Economic Development. The Office of Minority Business was similar in function and purpose to the Commission on Minority Business Development. The two programs co-existed, operating independent of one another, for five years, from 1988 to 1993. In 1993, the Commission on Minority Business Development was disbanded and the responsibilities of the Office of Minority Business Development were absorbed by the newly created Minority Business Advocacy Commission.¹¹⁹

House Bill 566 adopted in 1993 established the Minority Business Advocacy Commission and consolidated both minority business development programs under one department – the Department of Economic Development. The two programs, the Minority Business Advocacy Commission and the Office of Minority Business Development, share the general objective of the Department, which is to assist in

¹¹⁸ See, e.g., Reports for October 1989, 1990, and 1991.

¹¹⁹ House Bill No. 566 (1993).

creating jobs and capital investment in the State of Missouri. The Department of Economic Development offers direct assistance to businesses, communities and private parties to help them achieve their objectives for economic development. The Missouri Minority Business Advocacy Commission and the Office of Minority Business serve the needs of MBEs and WBEs. The Missouri Minority Business Advocacy Commission develops and administers programs for MBEs, and the Office of Minority Business develops and administers programs for both MBEs and WBEs.

B. OFFICE OF MINORITY BUSINESS AND MINORITY BUSINESS ADVOCACY COMMISSION PROGRAMS

Businesses qualify for the programs offered by the Missouri Minority Business Advocacy Commission or the Office of Minority Business based on ownership criteria. To qualify as an MBE, 51 percent of the business must be owned by person(s) belonging to a racial or ethnic minority who is involved in the daily management of the business.¹²⁰ To qualify as a WBE, 51 percent of the business must be owned by one or more women who are involved in the daily management of the business.

The programs provide a broad range of business development services to MBE/WBEs.¹²¹ The staff advises and counsels business enterprises owned by minorities and women regarding transactions involving local, state, and federal agencies. The programs offer:

- Technical assistance in business management, financing, certification, procurement, and other pertinent topics through public and private educational institutions;
- Advice and counsel regarding financial resources, permits, and licenses;
- Advocacy on behalf of minority business interests.

The Minority Business Advocacy Commission monitors state agency transactions, provides agencies with technical assistance to enhance the identification and utilization of minority firms, receives complaints, and analyzes government policies that affect MBEs.

¹²⁰ RSMo 33.750(3).

¹²¹ See e.g., RSMo 33.752(6).

II. OFFICE OF ADMINISTRATION

The State of Missouri Office of Administration, within the executive branch of the Missouri State government, is the agency charged by Revised Statutes of Missouri (RSMo) Chapters 8 and 34 with the centralized procurement responsibility for the entire executive branch. Within this Office, two divisions – Purchasing and Materials Management and Design and Construction – have taken a lead role in Missouri's efforts to enhance the State's utilization of businesses owned by minorities and women.

The catalyst for the development and refinement of the State's Minority Business Enterprise (MBE) and Women Business Enterprise (WBE) contracting and procurement programs was the adoption of the Code of Fair Practices for the Executive Branch of the state government. The code was promulgated by Executive Order 94-03, issued by Missouri Governor Mel Carnahan on January 14, 1994. Article XIII of the Order, "Contracts and Subcontracts," established an MBE utilization goal of 5 percent of contracts awarded to for-profit enterprises and 5 percent to not-for-profit enterprises. The Order directed each department to develop a plan to attain the established goal, or a higher one, through training, education, communication, and recruitment efforts. The Minority Business Advocacy Commission and the Division of Purchasing were enlisted to aid the departments in developing their respective plans. The Order imposed a July 1, 1994, due date for submission of each department's plan and required annual progress reports to the Governor.

The programs developed and implemented within the Office of Administration pursuant to the goals established by Executive Order 94-03 are examined within this section of Part Two.

A. DIVISION OF PURCHASING AND MATERIALS GENERAL STATUTORY AND REGULATORY PROVISIONS AND PURCHASING PROTOCOL

1. Contract Authority Levels

The Division of Purchasing in the Missouri Office of Administration purchases supplies, material, equipment, and professional and general services for the State, unless exempted by law or executive action. The rules governing the Division's purchasing activities are set forth in 1 CSR 40.¹²² Purchasing procedures are guided by the estimated dollar amount to be expended. The regulations first establish dollar amount purchasing thresholds that, in turn, dictate the specific steps that must be followed in awarding Division contracts. The thresholds are set at \$1,000, \$2,000,

¹²² House Bill No. 562 revised. Thresholds are now \$3,000 to \$25,000.

and \$10,000 or more. The following table summarizes the main threshold and corresponding authority requirements:

CONTRACT AMOUNT	AUTHORITY LEVEL
< \$1,000	No Bidding Necessary
\$1,000 - \$2,000	Informal Price Quotations From At Least 3 Vendors Chosen by Agency
\$2,000 - \$10,000	Informal Price Quotations From At Least 3 Vendors Chosen by Division
> \$10,000	Formal Bids Solicited by Advertising

Purchases that involve an agency expenditure of less than \$1,000 may be procured on the open market without competition. Agencies may make purchases in this range without involving the Division.¹²³ However, equipment, supplies, or services that are available through current state contracts may not be purchased on the open market.¹²⁴

All procurements which exceed \$1,000 must be competitively bid. If the expenditure is anticipated to be less than or equal to \$2,000, the regulations allow the procuring agency to secure informal price quotations from a minimum of three vendors.¹²⁵ For a procurement that is expected to cost more than \$2,000 but less than \$10,000, the Purchasing Division, not the agency, must secure informal quotes from a minimum of three vendors.¹²⁶ As an alternative, the Division may authorize the agency to secure the quotes, provided the quotes are submitted in writing and the agency follows the Division's policies and procedures in obtaining the quotes.¹²⁷

Finally, for procurements of \$10,000 or more, the Division must secure competitive bids by advertising the contracting opportunity in at least two daily newspapers of general circulation, in places that are most likely to reach prospective bidders.¹²⁸ The

¹²³ 1 CSR 40-1.040.

¹²⁴ Id.

¹²⁵ 1 CSR 40-1.040(2).

¹²⁶ 1 CSR 40-1.040(2)(B).

¹²⁷ Id. at 40-1.040(2)(C).

¹²⁸ Id. at 40-1.040(2)(D).

Division must utilize either a written request for proposal (RFP) or invitation for bid (IFB) form of solicitation.¹²⁹

B. MINORITY BUSINESS ENTERPRISE PROGRAM

1. Five Percent MBE Usage Goal

In accordance with Executive Order 94-03, state agencies should have the goal of awarding at least 5 percent of the total value of all contracts to businesses that qualify as minority business enterprises as defined in RSMo 37.020. A Minority Business Enterprise (MBE) is defined as either a sole proprietorship, partnership, joint venture or corporation in which 51 percent of ownership and management of daily business operations is held by one or more minorities.¹³⁰ A minority is defined by RSMo 33.750 as belonging to one of the following racial minority groups:

- African Americans,
- Native Americans,
- Hispanic Americans,
- Asian Americans or
- other similar racial groups.

In furtherance of the 5 percent goal, contractors of the state are either required to make a good faith goal or encouraged to utilize MBEs as subcontractors. The contractors' responsibilities to make a good faith effort to use MBEs is dependent on the size of the original contract amount; however, regardless of this amount, contractors are required to indicate with their original bid the percentage and name of MBEs to be used in fulfilling the contract.¹³¹ A listing of minority vendors registered with the Division of Purchasing and Materials Management is available on the Internet at the Division of Purchasing and Materials Management's home page address at <http://www.state.mo.us/oa/purch/purch.htm>. The list can also be obtained directly from the Division of Purchasing and Materials Management's Minority Purchasing Unit.

¹²⁹ 1 CSR 40-1.050(1).

¹³⁰ State of Missouri, *Division of Purchasing and Materials Management, Policies and Procedures*, P-002, P-003.

¹³¹ *Id.*

2. Subcontractor Five Percent Goal

a. Contracts \$100,000 or Greater

i. Initial Contractor's Bid

If any bidder, including an MBE, proposes to subcontract for services and/or equipment, the bidder is required to make a good faith effort prior to submitting a bid, to locate and contract with MBEs in order to meet the minimum goal of 5 percent of the total dollar value of the contract.¹³² Subcontract work has been defined as work that provides a commercially useful function directly related to the delivery of the service/product required.

The Division of Purchasing and Materials Management will determine whether the level of minority participation proposed by the bidder and related documentation of efforts to achieve the 5 percent goal have satisfied the good faith effort requirement. Failure to meet the 5 percent requirement or to demonstrate a good faith effort shall result in the rejection of the bid. The Division reserves the right to request additional information from bidders to determine responsiveness to the good faith effort requirement.

ii. MBE Payment Reporting

If the contractor utilizes MBE subcontractors, the contractor shall prepare and submit to the Division of Purchasing and Materials Management a report detailing all subcontracting payments to MBEs.¹³³ The report must include MBE subcontracting payments for the reporting period and for the fiscal year to date. The report shall be submitted on a periodic basis as determined by the Division of Purchasing and Materials Management at the time of contract award.¹³⁴ The Division of Purchasing and Materials Management will monitor the contractor's effectiveness in meeting the minority participation level indicated in the contractor's original bid.

b. Contracts \$100,000 or Less

In order to assist the state in meeting its 5 percent MBE contracting goal, bidders are encouraged to utilize MBEs for any subcontracts awarded for services and/or equipment provided pursuant to the contract.¹³⁵ The bidder should indicate if any

¹³² Id.

¹³³ State of Missouri, *Division of Purchasing and Materials Management, Policies and Procedures*, gcr. 415.

¹³⁴ Id.

¹³⁵ State of Missouri, *Division of Purchasing and Materials Management, Policies and Procedures*, bidder 123.

subcontractors will be used to fulfill the requirements of the contract. The bidder should provide specific information regarding subcontracts such as the name of subcontractor, nature and value of the subcontracted work, and other pertinent information. The bidder should indicate whether or not the subcontractor qualifies as a Minority Business Enterprise.¹³⁶ Subcontract work shall be defined as work that provides a commercially useful function directly related to the delivery of the service/product required.

c. MBE Subcontractor Replacement

In the event that a current MBE subcontractor is unable to satisfactorily perform, regardless of contract amount, the contractor, is responsible for making a good faith effort to replace the subcontractor with another MBE subcontractor.¹³⁷ The contractor must secure written approval from the Division of Purchasing and Materials Management, prior to the replacement of an MBE subcontractor.¹³⁸ If the contractor proposes replacement of an MBE subcontractor with a non-MBE, the contractor must provide documentation of any and all efforts made to secure an MBE replacement. The Division of Purchasing and Materials Management shall have sole discretion in determining if the actions taken by the contractor constitute a good faith effort.¹³⁹

d. Affirmative Action Program Requirements

Under State of Missouri Division of Purchasing and Materials Management Terms and Conditions, Invitation for Bid, section 21, all contractors and subcontractors must agree not to discriminate against recipients of services or employees.¹⁴⁰ If the contractor or subcontractor employs at least 50 persons, they must have and maintain an affirmative action program including:

- a written policy statement,
- designated person handling affirmative action issues,
- establishment of non-discriminatory standards,

¹³⁶ Id.

¹³⁷ State of Missouri, *Division of Purchasing and Materials Management, Policies and Procedures*, gcr. 415.

¹³⁸ Id.

¹³⁹ Id.

¹⁴⁰ State of Missouri, *Division of Purchasing and Materials Management, Terms and Conditions, Invitation for Bid, Non-Discrimination And Affirmative Action, Sec. 21.*

- exclusion of discrimination from collective bargaining agreements,
- performance of internal audits and future planning.

If discrimination is found to exist, the Division will take appropriate enforcement action including cancellation of the contract, removal from all bidder's lists until corrective action is made and ensured, and referral to the Attorney General's Office, whichever is deemed most appropriate.¹⁴¹

III. DIVISION OF DESIGN AND CONSTRUCTION STATUTORY AND REGULATORY PROVISIONS AND PURCHASING PROTOCOL

Pursuant to the authority of RSMo Chapter 8, the Division of Design and Construction (hereinafter Construction) is responsible for contracting of construction and capital improvements for all Missouri agencies except the Department of Conservation and the Missouri Highway and Transportation Department.

DIVISION OF DESIGN AND CONSTRUCTION EFFORTS RELATED TO MINORITY AND WOMEN BUSINESS ENTERPRISES

The Division of Design and Construction established a formal MBE/WBE program in 1984. The procedures implementing the Program are set forth in 1 CSR 30-5.¹⁴² The program requires that the successful bidder of contracts bid and awarded in an amount equal to or greater than one hundred thousand dollars (\$100,000) have a goal of awarding not less than 10 percent of the contract price to MBE/WBE subcontractors for work performed in the greater St. Louis and Kansas City metropolitan areas. For contracts to be completed in all other areas of the State, the goal is 5 percent.¹⁴³

The program facilitates the utilization of MBE/WBEs by requiring the commissioner of the Division of Design and Construction to compile and publish a directory of MBE/WBEs, and to distribute the directory to all bidders and contractors.¹⁴⁴

¹⁴¹ Id.

¹⁴² Construction's M/WBE Program was actually established, not merely implemented, by regulation, rather than by statute.

¹⁴³ 1 CSR 30-5.010(5).

¹⁴⁴ 1 CSR 30-5.010(4)(A)1.

Contractors included on the list are certified by the State. The certification process requires release of information regarding the structure, ownership, experiences, and capacity of their firms.¹⁴⁵

The Division of Design and Construction MBE/WBE program provides for good faith effort in lieu of actual performance for the program goals. Compliance is ensured by requiring prime contractors to make and substantiate efforts to locate and include MBE/WBE subcontractors and to utilize MBEs in execution of the contract. Specifically, contractors are required to document in writing their efforts to locate MBE/WBEs to explain why MBE/WBE subcontracting bids were rejected, and to explain to the Director's satisfaction why an MBE/WBE subcontractor was not retained.¹⁴⁶ A waiver provision protects the opportunities of contractors who attempt, in good faith, to locate MBE/WBE subcontractors for bidding on specific contracts but who are unsuccessful in their efforts.¹⁴⁷

In addition to the MBE/WBE certification program, the Division of Design and Construction employs outreach measures to ensure MBE/WBE access to the construction market and to stimulate utilization of MBE/WBE firms doing business in Missouri. The Division endeavors to locate and notify MBE/WBEs of contracting opportunities with the State. Division officials attend trade-oriented events, contact local minority trade associations, and provide pre-bid notification and technical assistance to MBE/WBEs. The Division also co-sponsors the annual Minority Business Procurement and Contracting Symposium in cooperation with the University of Missouri. Finally, the Division has attempted to increase utilization of MBE/WBEs by identifying and contacting MBE/WBE firms capable and willing to take on emergency print production procurements.

IV. DEPARTMENT OF REVENUE: THE STATE LOTTERY

Seventy percent of Missouri voters authorized creation of the statewide lottery through adoption of Amendment 5. The Lottery is a sub-unit of the State's Department of Revenue. Sections 313.200 through 313.350 of the Revised Statutes of Missouri (RSMo) set forth the legislation governing the Lottery, including authority to award contracts and issue purchase orders.

¹⁴⁵ 1 CSR 30-5.010(10),(11).

¹⁴⁶ 1 CSR 30-5.010(7),(8); 30-5.010(5)(B),(C).

¹⁴⁷ 1 CSR 30-5.010(6).

Section 313.270 of the RSMo vests the Lottery with the authority to award contracts and issue purchase orders. The Lottery may procure a broad variety of goods and services, including such items as computer hardware, motor vehicles, equipment maintenance, and travel-related services. Vendors who are interested in supplying these goods and services to the Lottery must submit an information form which inquires about vendor products, ownership, and experiences. Much of this information is expressly required by State regulation.¹⁴⁸ Information from this form is entered into the Lottery's vendor database and is used to mail bid notices and RFPs.

Section 313.270 also details the Lottery's Minority and Woman Business Enterprise (MBE/WBE) program. The program requires that 10 percent of Lottery contracts be awarded to MBEs, and 5 percent be awarded to WBEs. The Lottery requires that MBE/WBEs be certified. However, the Lottery does not actually conduct investigations to verify MBE/WBE status. Instead, the Lottery relies on an affidavit submitted by the vendor along with its information form.

The regulations implementing the Lottery legislation are set forth in 12 CSR 40-30. The essential purpose of these regulations is to establish procedures for the selection of vendors for Lottery procurement awards. Section 40-30-010 of the regulations requires that the Lottery select vendors through the purchasing procedures applicable to all other State procurement, i.e., through advertised bids as set forth in 1 CSR 30 and 40. However, the Lottery regulations allow the Lottery Director to depart from these methods in four circumstances:

1. When the Director finds that the economic welfare or maximum efficiency of the Lottery requires other than the usual State procedures;
2. When fewer than three vendors exist for supplying a particular commodity or service;
3. When an emergency situation exists; and/or
4. When the Director determines that the integrity of the Lottery requires other than the usual State procedures.¹⁴⁹

When one or all of these four circumstances exists, the remaining procedures outlined in 12 CSR 40-30 are applicable.¹⁵⁰

¹⁴⁸ See 12 CSR 40-30.110.

¹⁴⁹ 12 CSR 40-30.020.

¹⁵⁰ The Title also sets forth procedures that ostensibly are applicable in any circumstance involving the use of vendors for Lottery procurement, e.g., guidelines on the types of information required of all vendors, including corporate vendors, partnership vendors, and vendors who are sole proprietors.

The Lottery's regulations establish protocol for the award of Lottery contracts only if the Director has determined that the State purchasing procedures should not be followed. This protocol requires the Director to solicit, through written specifications, a minimum of three competitive bids, using generic or functional terms, unless brand names are reasonably necessary. The protocol also requires the Director to administer the Lottery bid procedure to encourage the submission of bids by minority vendors.¹⁵¹ To satisfy this requirement, the Director may provide extra points or a percentage preference to MBE/WBEs during the evaluation process, and/or give MBE/WBEs the opportunity to rebid on a contract, or bid on part of the contract to a level within the percentage preference.¹⁵²

More relaxed procedures apply in emergencies and when there are fewer than three vendors who can supply a particular commodity or service. In emergency situations, the Director must seek competitive quotes whenever possible and must seek quotes from as many vendors as is practical, in a manner calculated to result in the lowest price and best terms under the circumstances. An emergency is defined as a situation which threatens the viability, integrity, or economic health of the Lottery.¹⁵³ In emergency circumstances, if the Director must seek to obtain goods or services from three or fewer vendors, he or she is authorized by the regulations to negotiate with the vendor(s) who are capable of providing the items at the lowest price and best terms. The Director may award the contract at any time after determining that the lowest price and best terms have been obtained.¹⁵⁴

The regulations also require that every contractor who is offered a contract with the Lottery post a performance bond before the contract is signed. However, the Director is authorized to allow any such vendor to promise to pay damages in lieu of a bond. The amount of the bond must satisfy the Director that the Lottery is protected from damage due to the vendor's default on the contract. A surety licensed with the State must be on the bond as well.¹⁵⁵

The foregoing summary sets forth the essential elements of the basic purchasing protocols, MBE/WBE statutes, and executive orders for three branches of the Missouri executive branch of government under examination in this Disparity Study. These mandates and policies could significantly enhance the participation of MBE/WBEs in Missouri public contracting, if comprehensive procedures were promulgated and rigorously implemented.

¹⁵¹ 12 CSR 40-30.030.

¹⁵² 12 CSR 40-30.170.

¹⁵³ 12 CSR 40-30.050.

¹⁵⁴ 12 CSR 40-30.040.

¹⁵⁵ 12 CSR 40-30.100.

Part Three

STATISTICAL DISPARITY ANALYSIS

I. THE STATISTICAL FRAMEWORK

An acceptable method of assessing disparity is to compare statistically a governmental entity's past history of contracting with MBE/WBEs to the availability of MBE/WBEs in the market area. According to the standards outlined in *Croson*, business discrimination can be inferred from a finding of a significant statistical disparity.

In determining whether the statistical evidence is adequate to give rise to an inference of discrimination, courts have looked to the "disparity index" – which consists of the percentage of minority (or women) contractor participation in local contracts divided by the percentage of minority (or women) contractor availability or composition in the population of firms in the local market area. A comparison is made of that same index for white males. Disparity indexes have been found highly probative evidence of discrimination where they ensure that the "relevant statistical pool" of minority (or women) contractors is being considered.

The Third Circuit, in *Contractors Ass'n of Eastern Pa., Inc. v. City of Philadelphia*, has ruled that the "relevant statistical pool" includes those businesses that not only exist in the marketplace, but that are qualified and interested in performing work by the entity in question. In that case, the Third Circuit rejected a statistical disparity finding where the pool of minority businesses used in comparing utilization to availability were those that were merely licensed to operate in the City of Philadelphia. Because merely being licensed to do business with the City does not indicate either a willingness or capability to do work for the City, the Third Circuit concluded the statistical disparity did not satisfy *Croson*.

Statistical evidence demonstrating a disparity between the utilization and availability of MBE/WBEs can be shown in more than one way. First, the **number** of MBE/WBEs utilized by an entity can be compared to the number of available MBE/WBEs. This is a strict *Croson* "disparity" formula. A significant statistical disparity between the number of MBEs that an entity utilizes in a given product/service category and the number of available MBEs in the relevant market area specializing in the specified product/service category would give rise to an inference of discriminatory exclusion.

Second, MBE/WBE **dollar participation** can be compared to MBE/WBE availability. This could show a disparity between the award of contracts by an entity in the relevant locality/market area to available majority contractors and the award of contracts to MBE/WBEs. Thus, in *Associated General Contractors of California (AGCC)*, an

independent consultant's study compared the number of available MBE prime contractors in the construction industry in San Francisco with the amount of contract dollars awarded to San Francisco MBEs over a one-year period. The study found that available MBEs received far fewer construction contracts in proportion to their numbers than their available non-minority counterparts.¹⁵⁶

II. ESTIMATED STATE CONTRACTING AND PURCHASING DOLLAR VOLUME

As set forth in *Croson*, and subsequent cases, the history of MBE/WBE contracting in the enacting jurisdiction must be well-documented in disparity studies. Utilization data were collected from State of Missouri records. The objective of the utilization data collection was to determine the contracting practices related to the use of MBE/WBEs, compared to non-MBE/WBEs, of those agencies of State government operating under the State Purchasing Procedures. The specific contracting categories under consideration were construction, design consulting (architectural and engineering), and purchasing. A separate analysis was performed of State Lottery contracting and purchasing expenditures. The study period is fiscal year 1989-94.

A. CONSTRUCTION AND DESIGN CONSULTANT CONTRACTS

The State computerized Project Accounting Management Systems (PAMS) contains construction and design consultant expenditure information. All of those expenditures for the past six years were downloaded from PAMS. Those data are summarized in Table 3.1.

The dollar volume of construction contracts issued during the study period is \$166,314,940, and the dollar volume of design consultant contracts is \$24,902,820, totaling \$191,217,760.

¹⁵⁶ Specifically, the study found that MBE availability was 49.5% for prime construction, but MBE dollar participation was only 11.1%; that MBE availability was 36% for prime equipment and supplies, but MBE dollar participation was 17%; and that MBE availability for prime general services was 49%, but dollar participation was 6.2%.

**Table 3.1 Construction, Design Consultant
Expenditures, Fiscal Years 1989-94**

	Total Dollars	Number of Contracts	Source
Construction Contract Records	\$166,314,940	1,472	PAMS
Design Consultant Contract Records	\$24,902,820	368	PAMS
Totals	\$191,217,760	1,840	

B. PURCHASING REQUISITIONS

State purchasing requisitions are maintained in the Division of Materials Management (MAPS) automated procurement system. Each purchase requisition can result in a contract or a purchase order.

1. Contracts

Contracts resulting from requisitions are maintained in MAPS for two years after expiration of the contract. After that period, contract information is purged from the system. Contract information is then microfilmed and archived in purchasing department files.

The universe of all contract records for fiscal years 1992-94 were collected from MAPS. Expired contract records for fiscal years 1989-92 were sampled using the sampling scheme described below.

2. Purchase Orders

Purchase orders resulting from requisitions are maintained in MAPS for two years after award and are then purged. Once removed from MAPS, purchase order documents are also microfilmed and archived.

The universe of all purchase order records for fiscal years 1992-94 were collected from MAPS. Expired purchase order records for fiscal years 1989-92 were sampled using the sampling scheme described below.

3. Sampling Plan

Once microfilmed, contract and purchase orders are logged on the microfilm roll by blip number. Microfilm rolls are then numbered consecutively by year. Beginning and ending blip numbers are denoted on the face of the microfilm cartridge and roll numbers and blips are recorded in notebooks maintained by the microfilm clerk.

The notebook listings were used to calculate the total number of requisitions on each microfilm by subtracting the beginning blip from the ending blip. A sample size of 400 requisitions per year (1989 - 1992) was deemed to be of a sufficient size to estimate the entire universe of contracts and purchase orders at a confidence level of 0.95.

Samples of 400 requisitions for each year from 1989 through 1992 were randomly selected using a computerized random-number-generating procedure.

Contractor or vendor names, addresses, and the dollar value of the transaction were collected from each sampled record.

Finally, the universe of all 1992-94 contracts and purchase orders were collected from the MAPS database. Table 3.2 summarizes the data collection results.

4. Results

The total dollar value of 5,496 contract and purchase order expenditures for fiscal years 1989-94 is \$532,572,211, as depicted in Table 3.2.

**Table 3.2 Contract And Purchase Order Requisition Expenditures,
Fiscal Years 1989-94**

	Total Dollars	Source
Contracts and Purchase Orders	\$532,572,211	MAPS & Archives

C. MISSOURI LOTTERY

State Lottery transactions are maintained in Missouri Lottery's Budget and Expenditure Tracking System (BETS).

The universe of all transactions incumbered by the Lottery during the period fiscal years 1989-94 were collected from BETS and provided to the researchers by Lottery officials. Because BETS does not collect subcontractor information, Lottery officials supplied printed copies of the names and award amounts for all subcontractors known to them.

As depicted in Table 3.3, the Missouri Lottery expended an estimated total of \$84,725,926.

**Table 3.3 Missouri Lottery Expenditures,
Fiscal Years 1989-94**

	Total Dollars	Source
Total Expenditures	\$84,725,926	BETS

III. UTILIZATION ANALYSIS

A. CONSTRUCTION UTILIZATION

As indicted in Table 3.4, minority men and women received relatively few estimated construction contracts and construction contract dollars from the State:

- *African Americans*: While receiving 33 or 2.2 percent of the construction contracts during the study period, representing \$798,274 dollars or 0.48 percent of the construction contract dollars.
- *Asian Americans*: Received no construction contracts during the study period.

Table 3.4

Construction Utilization

Fiscal Years 1989 - 94

Ethnicity and Gender	Number of Contracts	Number% of Contracts	Amount of Dollars	Amount% of Dollars
African American Female	3	0.20%	\$13,924	0.01%
African American Male	30	2.01%	\$784,350	0.47%
Asian American Female	0	0.00%	\$0	0.00%
Asian American Male	0	0.00%	\$0	0.00%
Hispanic Female	6	0.39%	\$113,612	0.07%
Hispanic Male	2	0.14%	\$1,058,969	0.64%
Native American Female	4	0.29%	\$142,647	0.09%
Native American Male	4	0.29%	\$40,701	0.02%
Caucasian Female	159	10.80%	\$7,104,722	4.27%
Caucasian Male	1,264	85.87%	\$157,056,015	94.43%
TOTAL	1,472	100.00%	\$166,314,940	100.00%

Ethnicity	Number of Contracts	Number% of Contracts	Amount of Dollars	Amount% of Dollars
African American	33	2.21%	\$798,274	0.48%
Asian American	0	0.00%	\$0	0.00%
Hispanic	8	0.54%	\$1,172,581	0.71%
Native American	9	0.58%	\$183,348	0.11%
Caucasian Female	159	10.80%	\$7,104,722	4.27%
Caucasian Male	1,264	85.87%	\$157,056,015	94.43%
TOTAL	1,472	100.00%	\$166,314,940	100.00%

Minority and Gender	Number of Contracts	Number% of Contracts	Amount of Dollars	Amount% of Dollars
Minority Female	13	0.88%	\$270,183	0.16%
Minority Male	36	2.45%	\$1,884,021	1.13%
Caucasian Female	159	10.80%	\$7,104,722	4.27%
Caucasian Male	1,264	85.87%	\$157,056,015	94.43%
TOTAL	1,472	100.00%	\$166,314,940	100.00%

Minority and Woman	Number of Contracts	Number% of Contracts	Amount of Dollars	Amount% of Dollars
MBE	49	3.33%	\$2,154,204	1.30%
WBE	172	11.68%	\$7,374,905	4.43%
MWBE	208	14.13%	\$9,258,925	5.57%

- ***Caucasian Females:*** Received 159 or 10.8 percent of the construction contracts during the study period, representing \$7,104,722 dollars or 4.2 percent of the construction dollars.
- ***Caucasian Males:*** Received 1,264 construction contracts or 85.8 percent during the study period, representing \$157,056,015 dollars or 94.4 percent of construction dollars.
- ***Hispanics:*** Received 8 construction contracts or 0.5 percent during the study period, representing \$1,172,581 dollars or 0.7 percent of construction dollars.
- ***Native Americans:*** Received 9 construction contracts or about 0.5 percent during the study period, representing \$183,348 dollars or 0.1 percent of construction dollars.

B. DESIGN CONSULTANT UTILIZATION

Table 3.5 depicts the State's utilization of design consultants. Caucasian males received most of the estimated design consultant contracts and dollars:

- ***African Americans:*** Received 10 or 2.7 percent of the design consultant contracts during the study period, representing \$1,836,223 dollars or 7.3 percent of the design consultant contract dollars.
- ***Asian Americans:*** Received 3 or 0.8 percent of the design consultant contracts, during the study period, representing \$79,888 dollars or 0.3 percent of the design consultant contract dollars.
- ***Caucasian Females:*** Received 12 or 3.2 percent of the design consultant contracts during the study period, representing \$318,170 dollars or 1.2 percent of the design consultant dollars.
- ***Caucasian Males:*** Received 341 or 92.6 percent of the design consultant contracts during the study period, representing \$22,603,207 dollars or 90.7 percent of the design consultant dollars.
- ***Hispanics:*** Received 2 or 0.5 percent of the design consultant contracts during the study period, representing \$65,332 dollars or 0.2 percent of the design consultant dollars.
- ***Native Americans:*** Received no design consultant contracts.

Table 3.5

Design Consultants Utilization

Fiscal Years 1989 - 94

Ethnicity and Gender	Number of Contracts	Number% of Contracts	Amount of Dollars	Amount% of Dollars
African American Female	0	0.00%	\$0	0.00%
African American Male	10	2.72%	\$1,836,223	7.37%
Asian American Female	0	0.00%	\$0	0.00%
Asian American Male	3	0.82%	\$79,888	0.32%
Hispanic Female	0	0.00%	\$0	0.00%
Hispanic Male	2	0.54%	\$65,332	0.26%
Native American Female	0	0.00%	\$0	0.00%
Native American Male	0	0.00%	\$0	0.00%
Caucasian Female	12	3.26%	\$318,170	1.28%
Caucasian Male	341	92.66%	\$22,603,207	90.77%
TOTAL	368	100.00%	\$24,902,820	100.00%

Ethnicity	Number of Contracts	Number% of Contracts	Amount of Dollars	Amount% of Dollars
African American	10	2.72%	\$1,836,223	7.37%
Asian American	3	0.82%	\$79,888	0.32%
Hispanic	2	0.54%	\$65,332	0.26%
Native American	0	0.00%	\$0	0.00%
Caucasian Female	12	3.26%	\$318,170	1.28%
Caucasian Male	341	92.66%	\$22,603,207	90.77%
TOTAL	368	100.00%	\$24,902,820	100.00%

Minority and Gender	Number of Contracts	Number% of Contracts	Amount of Dollars	Amount% of Dollars
Minority Female	0	0.00%	\$0	0.00%
Minority Male	15	4.08%	\$1,981,443	7.96%
Caucasian Female	12	3.26%	\$318,170	1.28%
Caucasian Male	341	92.66%	\$22,603,207	90.77%
TOTAL	368	100.00%	\$24,902,820	100.00%

Minority and Woman	Number of Contracts	Number% of Contracts	Amount of Dollars	Amount% of Dollars
MBE	15	4.08%	\$1,981,443	7.96%
WBE	12	3.26%	\$318,170	1.28%
MWBE	27	7.34%	\$2,299,613	9.23%

C. CONTRACT AND PURCHASE ORDER UTILIZATION

The estimated number and dollar amounts of contracts and purchase orders issued by the State during 1989-94 is depicted in Table 3.6. Caucasian males received most of those estimated contract and purchase order dollars:

- ***African Americans:*** Received 110 or 2 percent of the contracts and purchase orders during the study period, representing \$2,061,910 dollars or 0.3 percent of the contract and purchase order dollars.
- ***Asian Americans:*** Received 59 or 1 percent of the contracts and purchase orders during the study period, representing \$2,493,429 dollars or 0.4 percent of the contract and purchase order dollars.
- ***Caucasian Females:*** Received 280 or 5 percent of the contracts and purchase orders during the study period, representing \$11,871,272 dollars or 2.2 percent of the contract and purchase order dollars.
- ***Caucasian Males:*** Received 5,015 or 91.2 percent of the contracts and purchase orders during the study period, representing \$514,964,984 dollars or 96.6 percent of the contract and purchase order dollars.
- ***Hispanics:*** Received 16 or 0.2 percent of the contracts and purchase orders during the study period, representing \$905,193 dollars or 0.1 percent of the contract and purchase order dollars.
- ***Native Americans:*** Received 16 or 0.2 percent of the contracts and purchase orders during the study period, representing \$275,424 dollars or 0.05 percent of the contracts and purchase order dollars.

D. MISSOURI LOTTERY UTILIZATION

The estimated number and dollar amounts of contracts issued by the Missouri Lottery during 1989-94 is depicted in Table 3.7. Caucasian males received a large percentage of the estimated contract dollars:

- ***African Americans:*** Received 56 or 5.9 percent of the contracts during the study period, representing \$2,541,889 dollars or 3.0 percent of the contract dollars.
- ***Asian Americans:*** Received 4 or 0.4 percent of the contracts during the study period, representing \$122,764 dollars or 0.1 percent of the contract dollars.

Table 3.6

Contracts and Purchase Orders Utilization

Fiscal Years 1989 - 94

Ethnicity and Gender	Number of Contracts	Number% of Contracts	Amount of Dollars	Amount% of Dollars
African American Female	24	0.45%	\$355,877	0.07%
African American Male	86	1.56%	\$1,706,033	0.32%
Asian American Female	12	0.22%	\$335,353	0.06%
Asian American Male	47	0.85%	\$2,158,077	0.41%
Hispanic Female	12	0.22%	\$876,114	0.16%
Hispanic Male	4	0.07%	\$29,079	0.01%
Native American Female	4	0.07%	\$65,578	0.01%
Native American Male	12	0.21%	\$209,846	0.04%
Caucasian Female	280	5.09%	\$11,871,272	2.23%
Caucasian Male	5,015	91.25%	\$514,964,984	96.69%
TOTAL	5,496	100.00%	\$532,572,211	100.00%

Ethnicity	Number of Contracts	Number% of Contracts	Amount of Dollars	Amount% of Dollars
African American	110	2.00%	\$2,061,910	0.39%
Asian American	59	1.07%	\$2,493,429	0.47%
Hispanic	16	0.29%	\$905,193	0.17%
Native American	16	0.29%	\$275,424	0.05%
Caucasian Female	280	5.09%	\$11,871,272	2.23%
Caucasian Male	5,015	91.25%	\$514,964,984	96.69%
TOTAL	5,496	100.00%	\$532,572,211	100.00%

Minority and Gender	Number of Contracts	Number% of Contracts	Amount of Dollars	Amount% of Dollars
Minority Female	53	0.96%	\$1,632,921	0.31%
Minority Male	148	2.69%	\$4,103,034	0.77%
Caucasian Female	280	5.09%	\$11,871,272	2.23%
Caucasian Male	5,015	91.25%	\$514,964,984	96.69%
TOTAL	5,496	100.00%	\$532,572,211	100.00%

Minority and Woman	Number of Contracts	Number% of Contracts	Amount of Dollars	Amount% of Dollars
MBE	201	3.66%	\$5,735,955	1.08%
WBE	333	6.06%	\$13,504,194	2.54%
MWBE	481	8.75%	\$17,607,228	3.31%

Table 3.7

Missouri Lottery Utilization

Fiscal Years 1989 - 94

Ethnicity and Gender	Number of Contracts	Number% of Contracts	Amount of Dollars	Amount% of Dollars
African American Female	24	2.56%	\$521,287	0.62%
African American Male	32	3.42%	\$2,020,601	2.38%
Asian American Female	1	0.11%	\$4,868	0.01%
Asian American Male	3	0.32%	\$117,896	0.14%
Hispanic Female	7	0.75%	\$74,989	0.09%
Hispanic Male	4	0.43%	\$140,042	0.17%
Native American Female	4	0.43%	\$8,712	0.01%
Native American Male	8	0.85%	\$3,395,419	4.01%
Caucasian Female	91	9.72%	\$2,519,788	2.97%
Caucasian Male	762	81.41%	\$75,922,324	89.61%
TOTAL	936	100.00%	\$84,725,926	100.00%

Ethnicity	Number of Contracts	Number% of Contracts	Amount of Dollars	Amount% of Dollars
African American	56	5.98%	\$2,541,889	3.00%
Asian American	4	0.43%	\$122,764	0.14%
Hispanic	11	1.18%	\$215,031	0.25%
Native American	12	1.28%	\$3,404,131	4.02%
Caucasian Female	91	9.72%	\$2,519,788	2.97%
Caucasian Male	762	81.41%	\$75,922,324	89.61%
TOTAL	936	100.00%	\$84,725,926	100.00%

Minority and Gender	Number of Contracts	Number% of Contracts	Amount of Dollars	Amount% of Dollars
Minority Female	36	3.85%	\$609,856	0.72%
Minority Male	47	5.02%	\$5,673,959	6.70%
Caucasian Female	91	9.72%	\$2,519,788	2.97%
Caucasian Male	762	81.41%	\$75,922,324	89.61%
TOTAL	936	100.00%	\$84,725,926	100.00%

Minority and Woman	Number of Contracts	Number% of Contracts	Amount of Dollars	Amount% of Dollars
MBE	83	8.87%	\$6,283,815	7.42%
WBE	127	13.57%	\$3,129,644	3.69%
MWBE	174	18.59%	\$8,803,603	10.39%

- ***Caucasian Females***: Received 91 or 9.7 percent of the contracts during the study period, representing \$2,519,788 dollars or 2.9 percent of the contract dollars.
- ***Caucasian Males***: Received 762 or 81.4 percent of the contracts during the study period, representing \$75,922,324 dollars or 89.6 percent of the contracts dollars.
- ***Hispanics***: Received 11 or 1.1 percent of the contracts during the study period, representing \$215,031 dollars or 0.2 percent of the contract dollars.
- ***Native Americans***: Received 12 or 1.2 percent of the contracts and purchase orders during the study period, representing \$3,404,131 dollars or 4.0 percent of the contract dollars.

IV. STUDY MARKET AREA

A. LEGAL CRITERIA FOR MARKET AREA

Croson was explicit that the appropriate analysis in determining disparity is the statistical comparison of business availability and business utilization “in the local construction market.”¹⁵⁷ Unfortunately, the Court was less clear about the crucial issue of how this “local market” is to be determined, leaving to the lower courts the adjudication of whether competing definitions of this phrase are constitutionally appropriate.

The lower courts have turned predominantly to employment discrimination cases to determine the relevant market. While obvious adjustments in terms used and participants involved must be made, these cases have offered the federal courts a wealth of examples from which to draw.¹⁵⁸ In so doing, the courts applying *Croson* have made this Title VII analysis their own.

The body of cases examining market area for *Croson* purposes support a definition of market area that is merely reasonable.¹⁵⁹ Consistent with *Croson*’s requirement that the sponsoring jurisdiction has been either an active or a passive contributor to discrimination against the types of businesses intended to benefit from enterprise

¹⁵⁷ Id. at 510.

¹⁵⁸ See Schlei & Grossman, *Employment Discrimination Law* 1356-1364 (1985) for a heavily annotated discussion of statistical method in determining market area for employment discrimination purposes.

¹⁵⁹ See, e.g., *Concrete Works*, 36 F.3d 1513, 1528 (10th Cir. 1994).

programs,¹⁶⁰ the critical inquiry in determining market area is rather simple. The government entity must determine in what geographic area it has conducted a significant portion of the business practices that have created economic opportunities from which minority and women businesses have been excluded.¹⁶¹ The lower courts have repeatedly made clear that the relevant market area for *Croson* purposes need not be confined to the simple “jurisdictional boundaries” of the enacting government entity if this entity’s contracting activities that have “visited discrimination” on intended program beneficiaries¹⁶² have gone beyond those boundaries.¹⁶³ Therefore, a “market area” for *Croson* purposes can be safely defined as the geographic area accounting for a substantial or predominant volume of a government entity’s commercial activities.

B. DETERMINATION OF MARKET AREA

The following process was used to determine the State’s market area. First, the total dollar value of construction, design consultant contracts (architectural and engineering), and purchasing, including Missouri Lottery expenditures, was determined for all Missouri-based for-profit businesses over the study period. From these expenditures, the percentage of dollars awarded to all businesses was calculated for each city. Table 3.8 depicts the results.

Businesses in St. Louis received 31.5 percent of the dollars, those in Jefferson City received 30.3 percent, those in Kansas City received 10.9 percent, and those in Columbia received 3.2 percent. Together, dollars to businesses in those four cities account for 75.9 percent of the State’s public contracting dollars.

As discussed above, there is no clear basis in case law for concluding that this share of the State’s purchases is not significant enough to define a permissible market area. Therefore, these four cities constitute the market area for this study.

¹⁶⁰ Coral Constr., 941 F.2d at 922.

¹⁶¹ Both the District and the Appellate Court opinions in *Concrete Works* emphasize this point; see 823 F.Supp. at 835-836, and 36 F.3d at 1520, 1527-1529.

¹⁶² This is the wording of the Ninth Circuit Court of Appeals in *AGCC v. City and County of San Francisco*, 813 F.2d 922, 934 (9th Cir. 1987).

¹⁶³ See Coral Constr., 941 F.2d at 917, *Concrete Works*, 823 F.Supp. at 836.

Table 3.8 Market Area 1989-94

City	Amount	Percentage	Accumulated Percentages
St. Louis, Missouri	\$198,379,759.84	31.57	31.57
Jefferson City, Missouri	\$190,469,417.69	30.31	61.88
Kansas City, Missouri	\$ 69,029,361.99	10.98	72.86
Columbia, Missouri	\$ 20,470,672.81	3.26	76.12
Balance of Missouri Cities	\$150,065,352.94	23.88	100.0
Total Missouri	\$628,414,565.27	100.0	
Outside Missouri	\$180,101,332.00		
Total Utilization	\$808,515,897.27		

These figures have important implications for the setting of remedial goals. Such goals may be applied to contractors located in one of these four cities or contractors who have attempted to do business in these cities. These are the contractors who would have been affected by barriers in the relevant market area. Cities that are currently outside the market area could become subject to the area's goals once the dollar value of State contracts awarded within their jurisdiction increases sufficiently (at least 3 percent or more – as in the case of Columbia).

V. AVAILABILITY OF FIRMS IN THE MARKET AREA

According to *Croson*, another component of disparity studies is to count the number of qualified businesses available in the jurisdiction's market area and to compare the percentage of available firms to the percentage utilized by the jurisdiction. When considering sources for determining the number and percentage of ready, willing, and able MBE/WBEs and non-MBE/WBEs, the selection must be based on whether two significant aspects about the population in question can be gauged from the sources. The first aspect has to do with a firm's interest in doing business with an entity, as implied by the term "ready and willing." The second aspect that should be considered is a firm's qualifications or capabilities in providing a service or good.

With respect to gauging interest, the challenge lies in finding a source that will include all interested businesses, MBE/WBEs and non-MBE/WBEs. One obvious source are State agency bidder/proposer/vendor lists. However, the implicit assumption that all interested and able businesses have an equal opportunity to be placed on the State's bidders list is not necessarily correct for MBE/WBEs or for some non-MBE/WBEs, especially smaller or newer businesses. There are undoubtedly MBE/WBEs interested and able to do business with the State but who for various reasons (including perceived discriminatory barriers reported by businesses interviewed by Mason Tillman) may not ask to be placed on the bidders list. Similarly, there may be non-MBE/WBEs interested but not registered with the State. Thus, bidders lists are unreliable as the sole source for MBE/WBE availability without assurances that MBE/WBEs are not under represented because of the effects of past practices of exclusion and small non MBE/WBEs for various reasons associated with size.

The second aspect involves a consideration of a firm's qualifications – capability and capacity. The primary difficulty lies in establishing the criteria for determining capabilities and capacity to perform because any selected criteria will vary by contracting category as well as by a range of project specifications. In addition, there are the problems associated with aggregating the commercial information necessary to assess capacity.

A. SOURCES FOR DETERMINING AVAILABILITY

In an attempt to capture all businesses that may be interested in doing business with the State, vendor lists, proposer lists, and bidders lists were collected from Missouri State agencies. Further, to ensure the inclusion of all MBE/WBEs and non-MBEs that are interested in State contracting, but who did not include themselves in the general agency list(s), directories were collected from other local agencies and private organizations.

B. METHODOLOGY FOR DETERMINING AVAILABILITY

The **first step** in the availability research process was to eliminate duplicate businesses from all of the aforementioned sources. A cross-checking process of the public agency sources and directories was implemented to isolate unique businesses using, at a minimum, the **company name** as the primary category of information or field along with secondary fields **address**, **ethnicity of owner(s)**, and **type of business**.

If there was a match between the primary fields – for example, company name – but a discrepancy in at least two of the secondary fields, then the businesses were considered unique. If there was a match in the company name and a match in at least two of the secondary fields, then those businesses would be considered duplicated or repeated. The cross-checking revealed that non-MBE/WBEs are more likely to place themselves on bidder/proposer/vendor lists with various public agencies than

MBE/WBEs because of the higher rate of duplication or repetition¹⁶⁴ of non-MBE/WBEs in the public agency lists.

In the absence of specific parameters for determining whether a business should be restricted or excluded from the availability study because of capability, all businesses, majority and MBE/WBE, were contacted by telephone, and those who indicated an interest in working on State-funded work were assumed to be "willing" and were placed on the availability list. A series of questions were posed during the telephone interviews concerning the capacity of the businesses. However, businesses consistently declined to answer such capacity questions as the business' annual gross revenue, insurance and bonding level, and years in business.

The other significant constraint is that any current estimate of MBE/WBE availability may be biased downward due to past discrimination or barriers against MBE/WBEs. Using current estimates of MBE/WBE availability may only serve to perpetuate the effects of such discrimination. It is therefore important to note that while the study's estimate of availability may be over inclusive because it assumes that every ready and willing business is an able business, it may be under inclusive because it does not take into account those firms that would have been in business had it not been for discrimination.

VI. AVAILABILITY ANALYSIS

A. CONSTRUCTION AVAILABILITY

There are an estimated 1,100 ready, willing, and able construction companies in the State. The distribution of those available businesses is in Table 3.9:

African Americans: The estimated 143 firms account for 13 percent of the construction firms in the State.

Asian Americans: The estimated 14 construction firms account for 1.2 percent of the construction firms in the State.

Caucasian Females: The estimated 123 construction firms account for 11.1 percent of the construction firms in the State.

¹⁶⁴ After extracting unique firms from the public agency lists, it was found that unique non-M/WBE firms were repeated more times than unique M/WBEs.

Table 3.9

Construction Availability

Ethnicity and Gender	Number	Percent
	of Businesses	of Businesses
African American Female	21	1.89%
African American Male	122	11.13%
Asian American Female	2	0.19%
Asian American Male	12	1.09%
Hispanic Female	3	0.28%
Hispanic Male	27	2.49%
Native American Female	3	0.28%
Native American Male	1	0.10%
Caucasian Female	123	11.19%
Caucasian Male	785	71.36%
TOTAL	1,100	100.00%

Ethnicity	Number	Percent
	of Businesses	of Businesses
African American	143	13.02%
Asian American	14	1.28%
Hispanic	30	2.77%
Native American	4	0.38%
Caucasian Female	123	11.19%
Caucasian Male	785	71.36%
TOTAL	1,100	100.00%

Minority and Gender	Number	Percent
	of Businesses	of Businesses
Minority Female	29	2.64%
Minority Male	163	14.81%
Caucasian Female	123	11.19%
Caucasian Male	785	71.36%
TOTAL	1,100	100.00%

Minority and Woman	Number	Percent
	of Businesses	of Businesses
MBE	192	17.45%
WBE	152	13.83%
MWBE	315	28.64%

Caucasian Males: The estimated 785 firms, account for 71.3 percent of the construction firms in the State.

Hispanics: The 30 firms, account for 2.7 percent of the construction firms in the State.

Native Americans: The 4 firms, account for 0.3 percent of the construction firms in the State.

B. DESIGN CONSULTANTS AVAILABILITY

There are an estimated 624 ready, willing, and able design consultants in the State. The distribution of those available businesses is in Table 3.10:

African Americans: The estimated 94 firms account for 15.1 percent of the design consultants in the State.

Asian Americans: The estimated 10 firms account for 1.6 percent of the design consultants in the State.

Caucasian Females: The estimated 81 firms account for 12.9 percent of the design consultants in the State.

Caucasian Males: The estimated 416 firms, account for 66.7 percent of the design consultants in the State.

Hispanics: The 21 firms, account for 3.2 percent of the design consultants in the State.

Native Americans: The 2 firms, account for 0.3 percent of the design consultants in the State.

C. CONTRACTS AND PURCHASING AVAILABILITY

There are an estimated 4,358 ready, willing, and able contractors and vendors in the State. The distribution of those available businesses is in Table 3.11:

African Americans: The estimated 738 firms account for 16.9 percent of the contractors and vendors in the State.

Asian Americans: The estimated 41 firms account for 0.9 percent of the contractors and vendors in the State.

Table 3.10

Design Consultants Availability

Ethnicity and Gender	Number of Businesses	Percent of Businesses
African American Female	22	3.45%
African American Male	73	11.66%
Asian American Female	1	0.17%
Asian American Male	9	1.46%
Hispanic Female	5	0.86%
Hispanic Male	15	2.43%
Native American Female	0	0.00%
Native American Male	2	0.32%
Caucasian Female	81	12.90%
Caucasian Male	416	66.75%
TOTAL	624	100.00%

Ethnicity	Number of Businesses	Percent of Businesses
African American	94	15.11%
Asian American	10	1.63%
Hispanic	21	3.29%
Native American	2	0.32%
Caucasian Female	81	12.90%
Caucasian Male	416	66.75%
TOTAL	624	100.00%

Minority and Gender	Number of Businesses	Percent of Businesses
Minority Female	28	4.49%
Minority Male	99	15.87%
Caucasian Female	81	12.90%
Caucasian Male	416	66.75%
TOTAL	624	100.00%

Minority and Woman	Number of Businesses	Percent of Businesses
MBE	127	20.35%
WBE	109	17.39%
MWBE	208	33.25%

Table 3.11

Contracts and Purchasing Availability (includes Lottery)

Ethnicity and Gender	Number of Businesses	Percent of Businesses
African American Female	194	4.44%
African American Male	545	12.50%
Asian American Female	6	0.13%
Asian American Male	35	0.80%
Hispanic Female	35	0.81%
Hispanic Male	125	2.87%
Native American Female	4	0.09%
Native American Male	8	0.19%
Caucasian Female	459	10.53%
Caucasian Male	2,948	67.64%
TOTAL	4,358	100.00%

Ethnicity	Number of Businesses	Percent of Businesses
African American	738	16.94%
Asian American	41	0.93%
Hispanic	160	3.67%
Native American	12	0.28%
Caucasian Female	459	10.53%
Caucasian Male	2,948	67.64%
TOTAL	4,358	100.00%

Minority and Gender	Number of Businesses	Percent of Businesses
Minority Female	238	5.47%
Minority Male	713	16.36%
Caucasian Female	459	10.53%
Caucasian Male	2,948	67.64%
TOTAL	4,358	100.00%

Minority and Woman	Number of Businesses	Percent of Businesses
MBE	951	21.83%
WBE	697	16.00%
MWBE	1,410	32.36%

Caucasian Females: The estimated 459 firms account for 10.5 percent of the contractors and vendors in the State.

Caucasian Males: The estimated 2,948 firms, account for 67.6 percent of the contractors and vendors in the State.

Hispanics: The estimated 160 firms, account for 3.6 percent of the contractors and vendors in the State.

Native Americans: The 12 firms, account for 0.2 percent of the contractors and vendors in the State.

VII. STATISTICAL MODEL

Under a fair and equitable system of awarding contracts, the proportion of contract dollars awarded to MBE/WBEs would be equal to the proportion of MBE/WBEs in the relevant market area. If these proportions are not equal, or if a disparity exists between these proportions, the probability that the disparity is due to chance could be determined using a statistical test. If there is a very low probability that the disparity is due to chance¹⁶⁵, the *Court* has stated that an inference of discrimination can be made.

In analyzing the data of actual contract dollars received by a given ethnic/gender group and the expected contract dollars that a given ethnic/gender group should receive, any difference between the actual and expected dollars can be interpreted to be due to either discriminatory treatment or preferential practices in the process of awarding contracts.

The **first step** in conducting a statistical test is to calculate the contract value that each ethnic/gender group is expected to receive based on each group's respective availability in the market area. This value shall be referred to as the **expected contract amount**.

The **next step** is to compute the difference between the **expected contract amount** of a given ethnic/gender group and the **actual contract amount** received by that group. In order to assess whether this difference is attributable to chance, a Z statistic is calculated. The Z statistic standardizes the difference between the actual contract amount and the expected

¹⁶⁵ When conducting statistical tests, a confidence level must be established as a gauge for the level of certainty that an observed occurrence is not due to chance. It is important to note that a 100 percent confidence level or a level of absolute certainty can never be obtained in statistics. A 95 percent confidence level is considered by the Courts to be an acceptable level in determining whether an inference of discrimination can be made. Thus, the data analyzed here was done within the 95 percent confidence level.

contract amount by indicating how much the actual contract amount received should deviate from the expected contract amount.

Therefore, the Z statistic is defined as the number of standards deviations the actual contract amount is from the expected contract amount. The larger the Z statistic, or the larger the number of standard deviations (SDs) away from the expected amount, the lower the probability that the difference or disparity could have occurred by chance. The standard cut-off point for determining whether the disparity or difference is not due to chance is 1.64 SDs away from the expected amount. If the number of SDs away or the Z statistic exceeds 1.64, then an inference of discrimination [or bias] can be made which would mean that the data is statistically significant.

It is important to note that there are two critical constraints in performing statistical tests for significance. The size of the population is a factor which affects the reliability of the results. In other words, a relatively small population size, whether in terms of the total number of contracts or the total number of available businesses, decreases the reliability of the statistical results, which can preclude drawing any meaningful conclusions from the results. One or a few large contracts can also adversely affect a calculation of disparity using the standard parametric calculation.

Although an inference of discrimination cannot be made when statistical significance is not obtained from the test in which availability is greater than the utilization, even where the utilization is 0, one cannot infer from the results that there was no discrimination.

Where the data shows an availability greater than utilization, other statistical tests can be used to verify a finding of no statistical disparity using parametric analysis.

Therefore, in light of these two constraints, the results of the statistical disparity analysis are necessarily influenced by the size of the population in each contracting and ethnicity/gender category, and where the results are not statistically significant, the existence of discrimination cannot be ruled out.

VIII. STATISTICS AND ANECDOTAL ACCOUNTS OF DISCRIMINATION

As discussed above in the Legal Framework section of this Report, *Croson* holds that “[w]here there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such

contractors actually engaged by the locality or the locality's prime contractors, an inference of discriminatory exclusion could arise."¹⁶⁶

The Supreme Court first articulated and refined this concept – that statistics can be used to create an inference of discrimination – in a handful of employment discrimination cases.¹⁶⁷ It was in one of these employment discrimination cases, *Teamsters v. United States*, that the Court observed that statistical data creating an “inference” of discrimination can be supported by individual, personal accounts of discrimination, accounts which can “br[ing] the cold numbers convincingly to life.”¹⁶⁸ Given the limitations of the statistical test, anecdotal data has an especially important role in explaining the conditions of discrimination that might exist in the market area.

IX. DISPARITY ANALYSIS

Two types of statistical disparity analyses were conducted. The first examined the number of contracts awarded by ethnicity and gender. The second examined the amount of contract dollars awarded by ethnicity and gender. The following details the results of the statistical disparity analysis.

A. SUMMARY OF DISPARITY ANALYSIS—CONSTRUCTION CONTRACTS FOR 1989-94

As indicated in Table 3.12 and Chart 3.1, all minority groups and white women received fewer contracts than expected given their availability. This disparity was statistically significant for African Americans, Asian Americans, and Hispanics.

African Americans: Whereas African Americans represent 13 percent of available construction firms, they received 2.2 percent of the construction contracts.

Asian Americans: Whereas Asian Americans represent 1.2 percent of the construction firms, they received none of the construction contracts.

¹⁶⁶ Croson, 488 U.S. at 509.

¹⁶⁷ See *Croson*, 488 U.S. at 501-02, 509 (citing *Int'l Broth. of Teamsters v. U.S.*, 431 U.S. 324 (1977), *Hazelwood School Dist. v. U.S.*, 433 U.S. 299 (1977), *Bazemore v. Friday*, 478 U.S. 385 (1986), and *Johnson v. Transportation Agency*, 480 U.S. 616 (1987)).

¹⁶⁸ *Id.*

Table 3.12

Disparity Analysis -- Number of Construction Contracts Fiscal Years 1989 - 94

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Number	Utilization%	Availability%	Expected Number	Z	Net Number	Net %
African American	33	2.21%	13.02%	191.67	* -12.33	-159.14	-83.03%
Asian American	0	0.00%	1.28%	18.87	* -4.37	-18.87	-100.00%
Hispanic	8	0.54%	2.77%	40.75	* -5.22	-32.85	-80.62%
Native American	9	0.58%	0.38%	5.63	1.24	2.94	52.16%
Caucasian Female	159	10.80%	11.19%	164.66	-0.47	-5.66	-3.44%
Caucasian Male	1,264	85.87%	71.36%	1,050.41	* 12.31	213.59	20.33%
TOTAL	1,472	100.00%	100.00%	1,472.00			

Ethnicity and Gender	Actual Number	Utilization%	Availability%	Expected Number	Z	Net Number	Net %
African American Female	3	0.20%	1.89%	27.79	* -4.77	-24.90	-89.60%
African American Male	30	2.01%	11.13%	163.89	* -11.12	-134.24	-81.91%
Asian American Female	0	0.00%	0.19%	2.78	* -1.67	-2.78	-100.00%
Asian American Male	0	0.00%	1.09%	16.10	* -4.03	-16.10	-100.00%
Hispanic Female	6	0.39%	0.28%	4.17	0.79	1.61	38.62%
Hispanic Male	2	0.14%	2.49%	36.58	* -5.77	-34.46	-94.21%
Native American Female	4	0.29%	0.28%	4.17	0.08	0.17	3.96%
Native American Male	4	0.29%	0.10%	1.46	* 2.29	2.77	189.44%
Caucasian Female	159	10.80%	11.19%	164.66	-0.47	-5.66	-3.44%
Caucasian Male	1,264	85.87%	71.36%	1,050.41	* 12.31	213.59	20.33%
TOTAL	1,472	100.00%	100.00%	1,472.00			

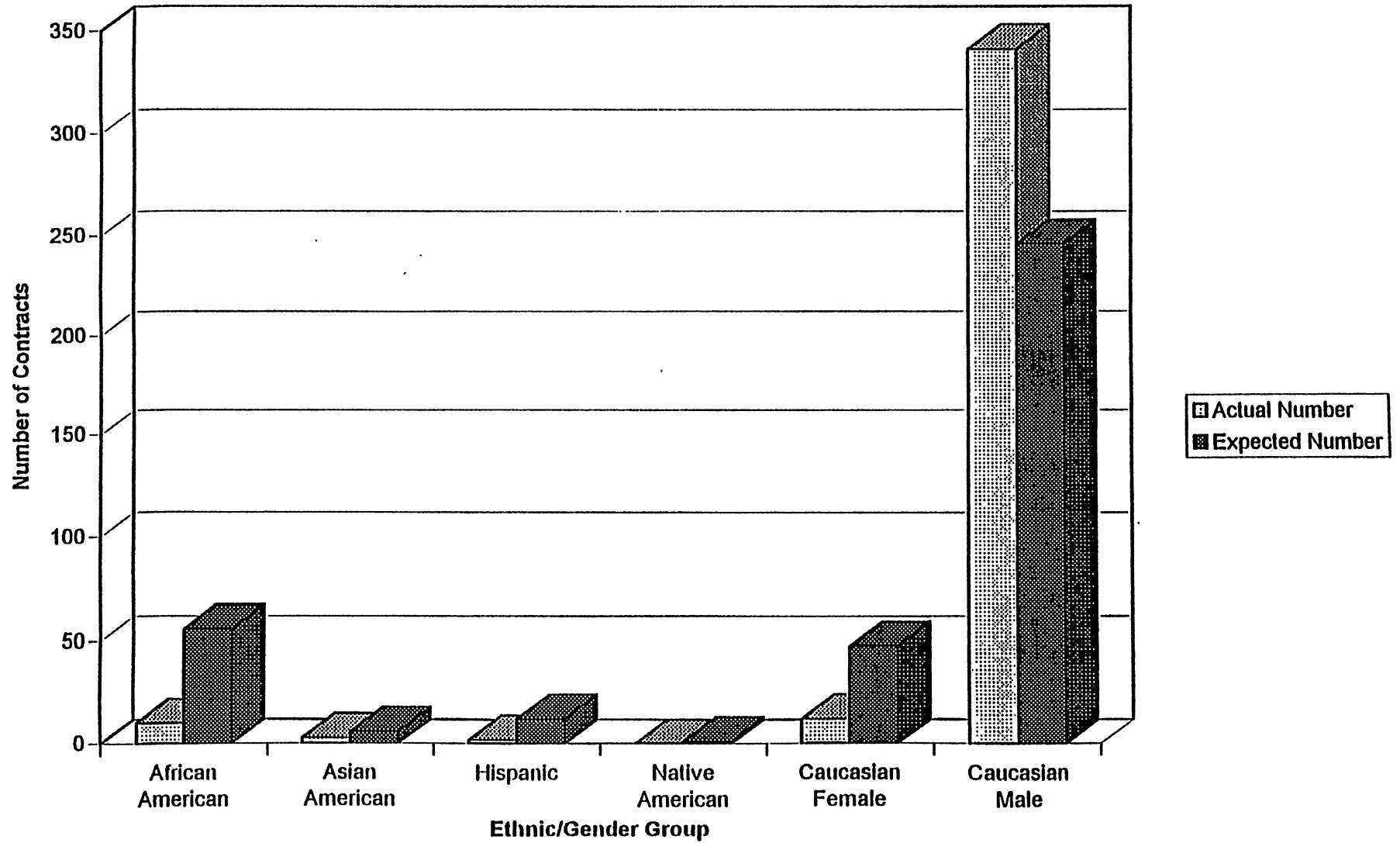
Minority and Gender	Actual Number	Utilization%	Availability%	Expected Number	Z	Net Number	Net %
Minority Female	13	0.88%	2.64%	38.90	* -4.21	-25.90	-66.58%
Minority Male	36	2.45%	14.81%	218.03	* -13.36	-182.03	-83.49%
Caucasian Female	159	10.80%	11.19%	164.66	-0.47	-5.66	-3.44%
Caucasian Male	1,264	85.87%	71.36%	1,050.41	* 12.31	213.59	20.33%
TOTAL	1,472	100.00%	100.00%	1,472.00			

Minority and Woman	Actual Number	Utilization%	Availability%	Expected Number	Z	Net Number	Net %
MBE	49	3.33%	17.45%	256.93	* -14.28	-207.93	-80.93%
WBE	172	11.68%	13.83%	203.57	* -2.38	-31.57	-15.51%
MWBE	208	14.13%	28.64%	421.59	* -12.31	-213.59	-50.66%

An asterisk (*) denotes statistical significance at the .05 level.

Chart 3.2

Disparity Analysis -- Number of Design Consultant Contracts



Caucasian Females: Whereas Caucasian females represent 11.1 percent of the construction firms, they received 10.8 percent of the construction contracts.

Caucasian Males: Whereas Caucasian males represent 71.3 percent of the construction firms, they received 85.8 percent of the construction contracts.

Hispanics: Whereas Hispanics represent 2.7 percent of the available construction firms, they received 0.5 percent of the construction contracts.

Native Americans: Whereas Native Americans represent 0.3 percent of the available construction firms, they received 0.5 percent of the construction contracts.

B. CONSTRUCTION CONTRACTS LOST TO MINORITY BUSINESSES

The Net Number Column 7 in Table 3.12 represents the number of contracts MBE/WBEs and Caucasian males should have received given the availability of each. Conversely, lost revenue is shown by the difference between the expected and actual number of contract awards.

Minority and women business owners lost more than 200 construction contracts let during the 1989-94 study period. For African Americans contracts lost was 159 contracts, for Asian Americans the number lost was 18, for Hispanics 32, for Caucasian females 5. Native American received 2 more construction contracts than would be expected. However, for the numbers are not statistically significant for Caucasian females and Native Americans. Caucasian males received 213 more contracts than expected, given their numbers.

C. SUMMARY OF DISPARITY ANALYSIS—DESIGN CONSULTANT CONTRACTS FOR 1989-94

The number of design consultant (architectural and engineering) contracts issued during the study period appears in Table 3.13 and Chart 3.2. The disparity in number of construction contracts received is statistically significant for African American, Hispanic, and Caucasian ethnic groups:

African Americans: Whereas African Americans represent 15.1 percent of available design consultants, they received 2.7 percent of the design consultant contracts.

Asian Americans: Whereas Asian Americans represent 1.6 percent of the design consultants, they received 0.8 percent of the design consultant contracts.

Table 3.13

Disparity Analysis -- Number of Design Consultant Contracts **Fiscal Years 1989 - 94**

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Number	Utilization%	Availability%	Expected Number	Z	Net Number	Net %
African American	10	2.72%	15.11%	55.60	* -6.64	-45.60	-82.01%
Asian American	3	0.82%	1.63%	6.00	-1.23	-3.00	-49.97%
Hispanic	2	0.54%	3.29%	12.11	* -2.95	-10.11	-83.49%
Native American	0	0.00%	0.32%	1.19	-1.09	-1.19	-100.00%
Caucasian Female	12	3.26%	12.90%	47.48	* -5.52	-35.48	-74.72%
Caucasian Male	341	92.66%	66.75%	245.63	* 10.55	95.37	38.83%
TOTAL	368	100.00%	100.00%	368.00			

Ethnicity and Gender	Actual Number	Utilization%	Availability%	Expected Number	Z	Net Number	Net %
African American Female	0	0.00%	3.45%	12.70	* -3.63	-12.70	-100.00%
African American Male	10	2.72%	11.66%	42.89	* -5.34	-32.89	-76.69%
Asian American Female	0	0.00%	0.17%	0.64	-0.80	-0.64	-100.00%
Asian American Male	3	0.82%	1.46%	5.36	-1.03	-2.36	-44.05%
Hispanic Female	0	0.00%	0.86%	3.18	* -1.79	-3.18	-100.00%
Hispanic Male	2	0.54%	2.43%	8.94	* -2.35	-6.94	-77.62%
Native American Female	0	0.00%	0.00%	0.00	-- ----	0.00	-----
Native American Male	0	0.00%	0.32%	1.19	-1.09	-1.19	-100.00%
Caucasian Female	12	3.26%	12.90%	47.48	* -5.52	-35.48	-74.72%
Caucasian Male	341	92.66%	66.75%	245.63	* 10.55	95.37	38.83%
TOTAL	368	100.00%	100.00%	368.00			

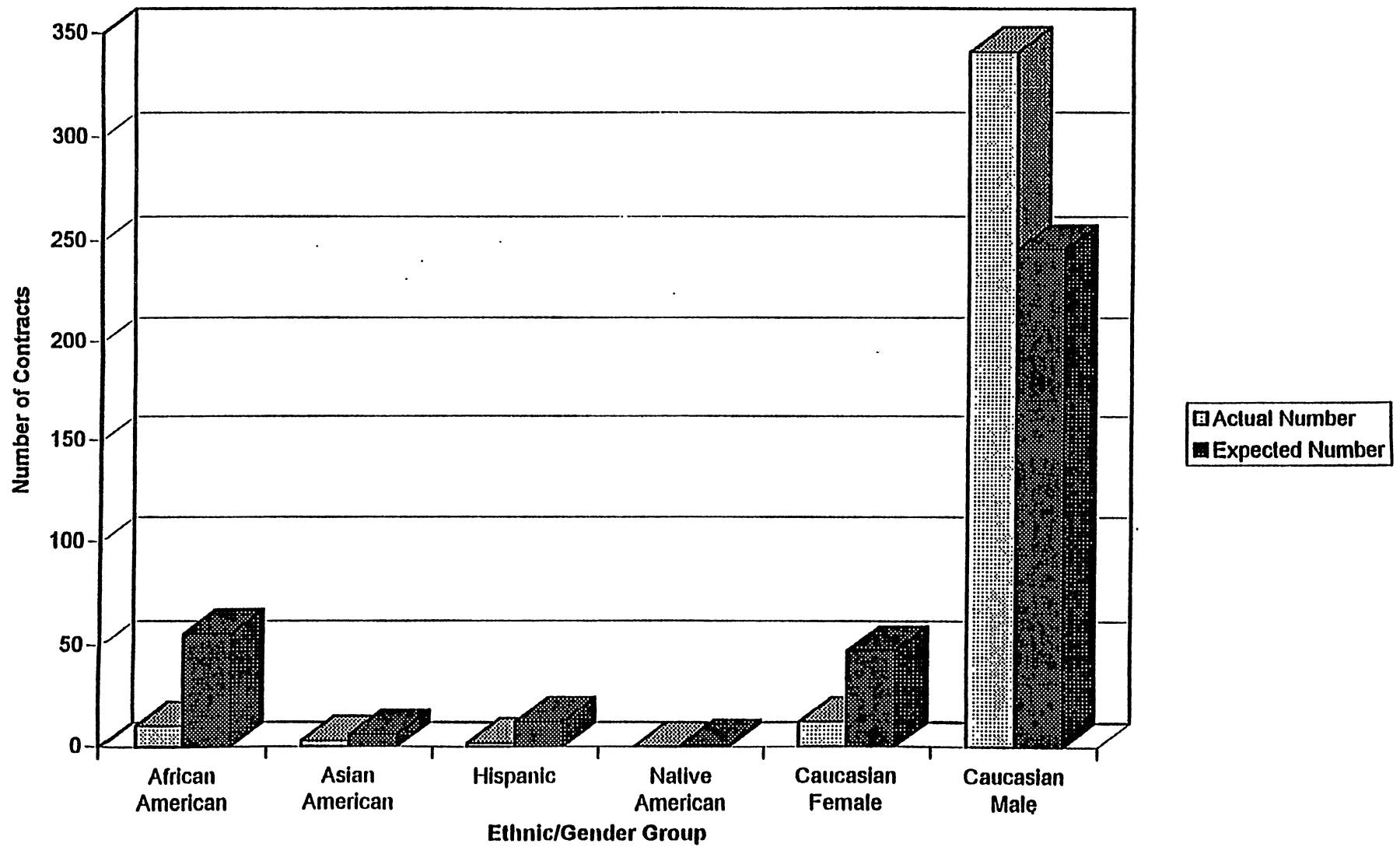
Minority and Gender	Actual Number	Utilization%	Availability%	Expected Number	Z	Net Number	Net %
Minority Female	0	0.00%	4.49%	16.51	* -4.16	-16.51	-100.00%
Minority Male	15	4.08%	15.87%	58.38	* -6.19	-43.38	-74.31%
Caucasian Female	12	3.26%	12.90%	47.48	* -5.52	-35.48	-74.72%
Caucasian Male	341	92.66%	66.75%	245.63	* 10.55	95.37	38.83%
TOTAL	368	100.00%	100.00%	368.00			

Minority and Woman	Actual Number	Utilization%	Availability%	Expected Number	Z	Net Number	Net %
MBE	15	4.08%	20.35%	74.90	* -7.76	-59.90	-79.97%
WBE	12	3.26%	17.39%	63.99	* -7.15	-51.99	-81.25%
MWBE	27	7.34%	33.25%	122.37	* -10.55	-95.37	-77.94%

An asterisk (*) denotes statistical significance at the .05 level.

Chart 3.2

Disparity Analysis -- Number of Design Consultant Contracts



Caucasian Females: Whereas Caucasian females represent 12.9 percent of the design consultants, they received 3.2 percent of the design consultant contracts.

Caucasian Males: Whereas Caucasian males represent 66.7 percent of the design consultants, they received 92.6 percent of the design consultant contracts.

Hispanics: Whereas Hispanics represent 3.2 percent of the available design consultants, they received 0.5 percent of the design consultant contracts.

Native Americans: Whereas Native Americans represent 0.3 percent of the available construction firms, they received none of the design consultant contracts.

D. DESIGN CONSULTANT CONTRACTS LOST TO MINORITY BUSINESSES

Column 7 in Table 3.13 depicts the number of design consultant contracts lost to businesses. African Americans should have received an additional 45 design consultant contracts, based on their availability to perform design consultant work for the State. Caucasian males received 95 more design consultant contracts than their numbers suggest they should have received. Asian American firms lost 3 contracts, Hispanic firms lost 10, Native Americans lost 1, and Caucasian females lost 35 contracts.

E. SUMMARY OF DISPARITY ANALYSIS—CONTRACTS AND PURCHASE ORDERS FOR 1989-94

The distribution of contracts and purchase orders are depicted in Table 3.14 and Chart 3.3. Minority business owners, except Asian Americans and Native Americans, received fewer than expected contracts and purchase orders, given their numbers. The disparity was significant for African Americans, Hispanics, and Caucasians.

African Americans: Whereas African Americans represent 16.9 percent of available vendors and consultants, they received 2 percent of the contracts and purchase orders.

Asian Americans: Whereas Asian Americans represent 0.9 percent of the available consultants and vendors, they received 1 percent of the contracts and purchase orders.

Table 3.14

Disparity Analysis -- Number of Contracts and Purchase Orders **Fiscal Years 1989 - 94**

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Number	Utilization%	Availability%	Expected Number	Z	Net Number	Net %
African American	110	2.00%	16.94%	931.27	* -29.52	-821.12	-88.17%
Asian American	59	1.07%	0.93%	51.32	1.07	7.65	14.91%
Hispanic	16	0.29%	3.67%	201.97	* -13.32	-185.84	-92.02%
Native American	16	0.29%	0.28%	15.26	0.13	0.50	3.25%
Caucasian Female	280	5.09%	10.53%	578.51	* -13.12	-298.51	-51.60%
Caucasian Male	5,015	91.25%	67.64%	3,717.67	* 37.41	1,297.33	34.90%
TOTAL	5,496	100.00%	100.00%	5,496.00			

Ethnicity and Gender	Actual Number	Utilization%	Availability%	Expected Number	Z	Net Number	Net %
African American Female	24	0.45%	4.44%	244.05	* -14.38	-219.59	-89.98%
African American Male	86	1.56%	12.50%	687.22	* -24.53	-601.54	-87.53%
Asian American Female	12	0.22%	0.13%	7.40	* 1.78	4.84	65.38%
Asian American Male	47	0.85%	0.80%	43.92	0.43	2.82	6.41%
Hispanic Female	12	0.22%	0.81%	44.37	* -4.84	-32.14	-72.44%
Hispanic Male	4	0.07%	2.87%	157.60	* -12.42	-153.70	-97.53%
Native American Female	4	0.07%	0.09%	4.93	-0.38	-0.85	-17.31%
Native American Male	12	0.21%	0.19%	10.33	0.42	1.35	13.06%
Caucasian Female	280	5.09%	10.53%	578.51	* -13.12	-298.51	-51.60%
Caucasian Male	5,015	91.25%	67.64%	3,717.67	* 37.41	1,297.33	34.90%
TOTAL	5,496	100.00%	100.00%	5,496.00			

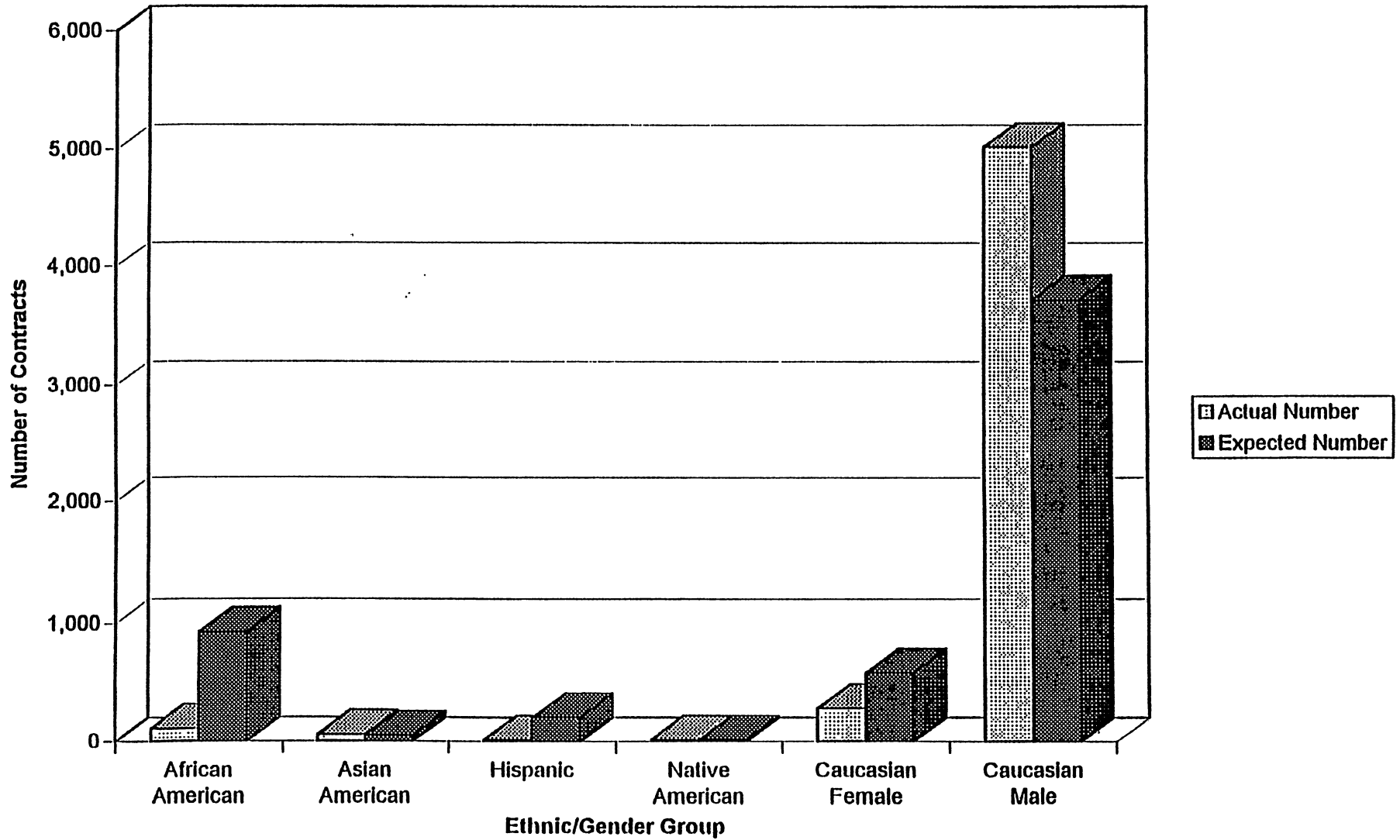
Minority and Gender	Actual Number	Utilization%	Availability%	Expected Number	Z	Net Number	Net %
Minority Female	53	0.96%	5.47%	300.74	* -14.69	-247.74	-82.38%
Minority Male	148	2.69%	16.36%	899.07	* -27.39	-751.07	-83.54%
Caucasian Female	280	5.09%	10.53%	578.51	* -13.12	-298.51	-51.60%
Caucasian Male	5,015	91.25%	67.64%	3,717.67	* 37.41	1,297.33	34.90%
TOTAL	5,496	100.00%	100.00%	5,496.00			

Minority and Woman	Actual Number	Utilization%	Availability%	Expected Number	Z	Net Number	Net %
MBE	201	3.66%	21.83%	1,199.82	* -32.61	-998.82	-83.25%
WBE	333	6.06%	16.00%	879.25	* -20.10	-546.25	-62.13%
MWBE	481	8.75%	32.36%	1,778.33	* -37.41	-1,297.33	-72.95%

An asterisk (*) denotes statistical significance at the .05 level.

Chart 3.3

Disparity Analysis -- Number of Contracts and Purchase Orders



Caucasian Females: Whereas Caucasian females represent 10.5 percent of the available consultants and vendors, they received 5 percent of the contracts and purchase orders.

Caucasian Males: Whereas Caucasian males represent 67.6 percent of the available consultants and vendors, they received 91.2 percent of the contracts and purchase orders.

Hispanics: Whereas Hispanics represent 3.6 percent of the available consultants and vendors, they received 0.2 percent of the contracts and purchase orders.

Native Americans: Whereas Native Americans represent 0.2 percent of the available consultants and vendors, they received 0.2 percent of the contracts and purchase orders.

F. CONTRACTS AND PURCHASE ORDERS LOST TO MINORITY BUSINESSES

As depicted in Table 3.14, Column 7, Net Number, African Americans, Hispanics, and Caucasian females lost significant numbers of contracts and purchase orders – African Americans lost 821, Hispanics lost 185, and Caucasian females lost 298.

G. SUMMARY OF DISPARITY ANALYSIS—MISSOURI LOTTERY CONTRACTS FOR 1989-94

The distribution of contracts are depicted in Table 3.15 and Chart 3.4.

Minority business owners, except Asians, received fewer than expected contracts and purchase orders, given their numbers. The disparity was significant for African Americans, Hispanics, and Caucasians.

African Americans: Whereas African Americans represent 16.9 percent of available vendors and consultants, they received 5.9 percent of the contracts.

Asian Americans: Whereas Asian Americans represent 0.9 percent of the available consultants and vendors, they received 0.4 percent of the contracts.

Caucasian Females: Whereas Caucasian females represent 10.5 percent of the available consultants and vendors, they received 9.7 percent of the contracts.

Caucasian Males: Whereas Caucasian males represent 67.6 percent of the available consultants and vendors, they received 81.4 percent of the contracts.

Table 3.15

Disparity Analysis -- Number of Missouri Lottery Contracts

Fiscal Years 1989 - 94

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Number	Utilization%	Availability%	Expected Number	Z	Net Number	Net %
African American	56	5.98%	16.94%	158.60	* -8.94	-102.60	-64.69%
Asian American	4	0.43%	0.93%	8.74	-1.61	-4.74	-54.23%
Hispanic	11	1.18%	3.67%	34.40	* -4.06	-23.40	-68.02%
Native American	12	1.28%	0.28%	2.60	* 5.84	9.40	361.61%
Caucasian Female	91	9.72%	10.53%	98.52	-0.80	-7.52	-7.64%
Caucasian Male	762	81.41%	67.64%	633.14	* 9.00	128.86	20.35%
TOTAL	936	100.00%	100.00%	936.00			

Ethnicity and Gender	Actual Number	Utilization%	Availability%	Expected Number	Z	Net Number	Net %
African American Female	24	2.56%	4.44%	41.56	* -2.79	-17.56	-42.26%
African American Male	32	3.42%	12.50%	117.04	* -8.40	-85.04	-72.66%
Asian American Female	1	0.11%	0.13%	1.26	-0.23	-0.26	-20.60%
Asian American Male	3	0.32%	0.80%	7.48	* -1.64	-4.48	-59.89%
Hispanic Female	7	0.75%	0.81%	7.56	-0.20	-0.56	-7.37%
Hispanic Male	4	0.43%	2.87%	26.84	* -4.47	-22.84	-85.10%
Native American Female	4	0.43%	0.09%	0.84	* 3.45	3.16	376.39%
Native American Male	8	0.85%	0.19%	1.76	* 4.71	6.24	354.55%
Caucasian Female	91	9.72%	10.53%	98.52	-0.80	-7.52	-7.64%
Caucasian Male	762	81.41%	67.64%	633.14	* 9.00	128.86	20.35%
TOTAL	936	100.00%	100.00%	936.00			

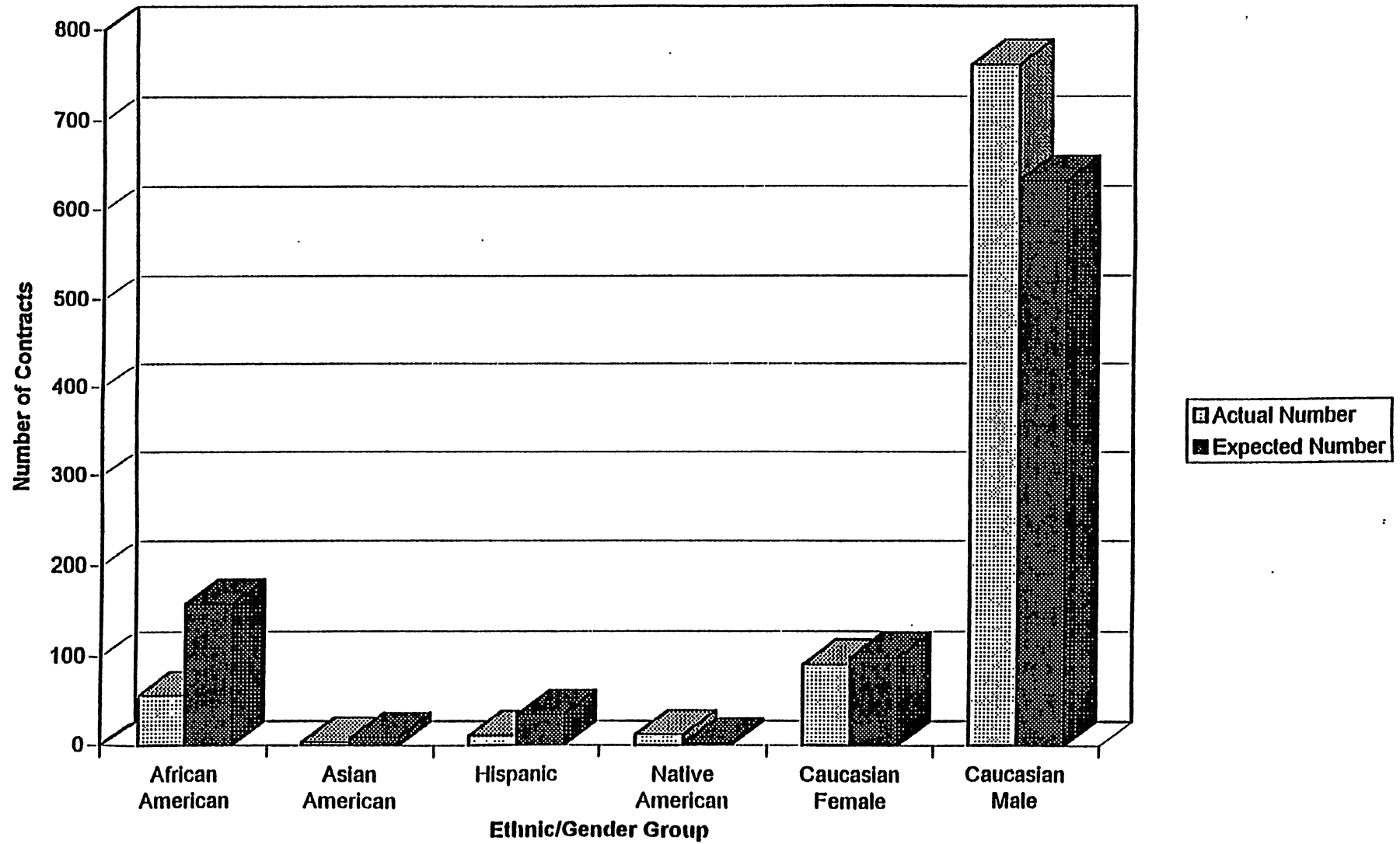
Minority and Gender	Actual Number	Utilization%	Availability%	Expected Number	Z	Net Number	Net %
Minority Female	36	3.85%	5.47%	51.22	* -2.19	-15.22	-29.71%
Minority Male	47	5.02%	16.36%	153.12	* -9.38	-106.12	-69.30%
Caucasian Female	91	9.72%	10.53%	98.52	-0.80	-7.52	-7.64%
Caucasian Male	762	81.41%	67.64%	633.14	* 9.00	128.86	20.35%
TOTAL	936	100.00%	100.00%	936.00			

Minority and Woman	Actual Number	Utilization%	Availability%	Expected Number	Z	Net Number	Net %
MBE	83	8.87%	21.83%	204.34	* -9.60	-121.34	-59.38%
WBE	127	13.57%	16.00%	149.74	* -2.03	-22.74	-15.19%
MWBE	174	18.59%	32.36%	302.86	* -9.00	-128.86	-42.55%

An asterisk (*) denotes statistical significance at the .05 level.

Chart 3.4

Disparity Analysis -- Number of Missouri Lottery Contracts



Hispanics: Whereas Hispanics represent 3.6 percent of the available consultants and vendors, they received 1.1 percent of the contracts.

Native Americans: Whereas Native Americans represent 0.2 percent of the available consultants and vendors, they received 1.2 percent of the contracts.

H. MISSOURI LOTTERY CONTRACTS LOST TO MINORITY BUSINESSES

As depicted in Table 3.15, Column 7, Net Number, African Americans, Hispanics, and Caucasian females lost significant numbers of contracts and purchase orders. African Americans lost 102, Asian Americans lost 4, Hispanics lost 23, and Caucasian females lost 7. Native Americans and Caucasian males received more contracts than expected.

I. SUMMARY OF DISPARITY ANALYSIS—CONSTRUCTION CONTRACT DOLLARS FOR 1989-94

The distribution of construction contract dollars is depicted in Table 3.16 and Chart 3.5. The disparity was significant for African Americans:

African Americans: Whereas African Americans represent 13.2 percent of available construction firms, they received 0.4 percent of the construction contract dollars.

Asian Americans: Whereas Asian Americans represent 1.2 percent of the available construction firms, they received no construction contract dollars.

Caucasian Females: Whereas Caucasian females represent 11.1 percent of the construction firms, they received 4.2 percent of the construction contract dollars.

Caucasian Males: Whereas Caucasian males represent 71.3 percent of the construction firms, they received 94.4 percent of the construction contract dollars.

Hispanics: Whereas Hispanics represent 2.7 percent of the available construction firms, they received 0.7 percent of the construction contract dollars.

Native Americans: Whereas Native Americans represent 0.3 percent of the available construction firms, they received 0.1 percent of the construction contract dollars.

Table 3.16

Disparity Analysis -- Construction Dollars Fiscal Years 1989 - 94

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization%	Availability%	Expected Dollars	Z	Net Dollars	Net %
African American	\$798,274	0.48%	13.02%	\$21,656,489	* -2.68	(\$20,858,215)	-96.31%
Asian American	\$0	0.00%	1.28%	\$2,132,583	-0.82	(\$2,132,583)	-100.00%
Hispanic	\$1,172,581	0.71%	2.77%	\$4,604,173	-0.90	(\$3,431,591)	-74.53%
Native American	\$183,348	0.11%	0.38%	\$636,272	-0.32	(\$452,924)	-71.18%
Caucasian Female	\$7,104,722	4.27%	11.19%	\$18,604,642	-1.58	(\$11,499,920)	-61.81%
Caucasian Male	\$157,056,015	94.43%	71.36%	\$118,680,782	* 3.67	\$38,375,233	32.33%
TOTAL	\$166,314,940	100.00%	100.00%	\$166,314,940			

Ethnicity and Gender	Actual Dollars	Utilization%	Availability%	Expected Dollars	Z	Net Dollars	Net %
African American Female	\$13,924	0.01%	1.89%	\$3,139,619	-0.99	(\$3,125,695)	-99.56%
African American Male	\$784,350	0.47%	11.13%	\$18,516,870	* -2.44	(\$17,732,520)	-95.76%
Asian American Female	\$0	0.00%	0.19%	\$313,962	-0.31	(\$313,962)	-100.00%
Asian American Male	\$0	0.00%	1.09%	\$1,818,621	-0.76	(\$1,818,621)	-100.00%
Hispanic Female	\$113,612	0.07%	0.28%	\$470,943	-0.29	(\$357,330)	-75.88%
Hispanic Male	\$1,058,969	0.64%	2.49%	\$4,133,230	-0.85	(\$3,074,261)	-74.38%
Native American Female	\$142,647	0.09%	0.28%	\$470,943	-0.27	(\$328,296)	-69.71%
Native American Male	\$40,701	0.02%	0.10%	\$165,329	-0.17	(\$124,628)	-75.38%
Caucasian Female	\$7,104,722	4.27%	11.19%	\$18,604,642	-1.58	(\$11,499,920)	-61.81%
Caucasian Male	\$157,056,015	94.43%	71.36%	\$118,680,782	* 3.67	\$38,375,233	32.33%
TOTAL	\$166,314,940	100.00%	100.00%	\$166,314,940			

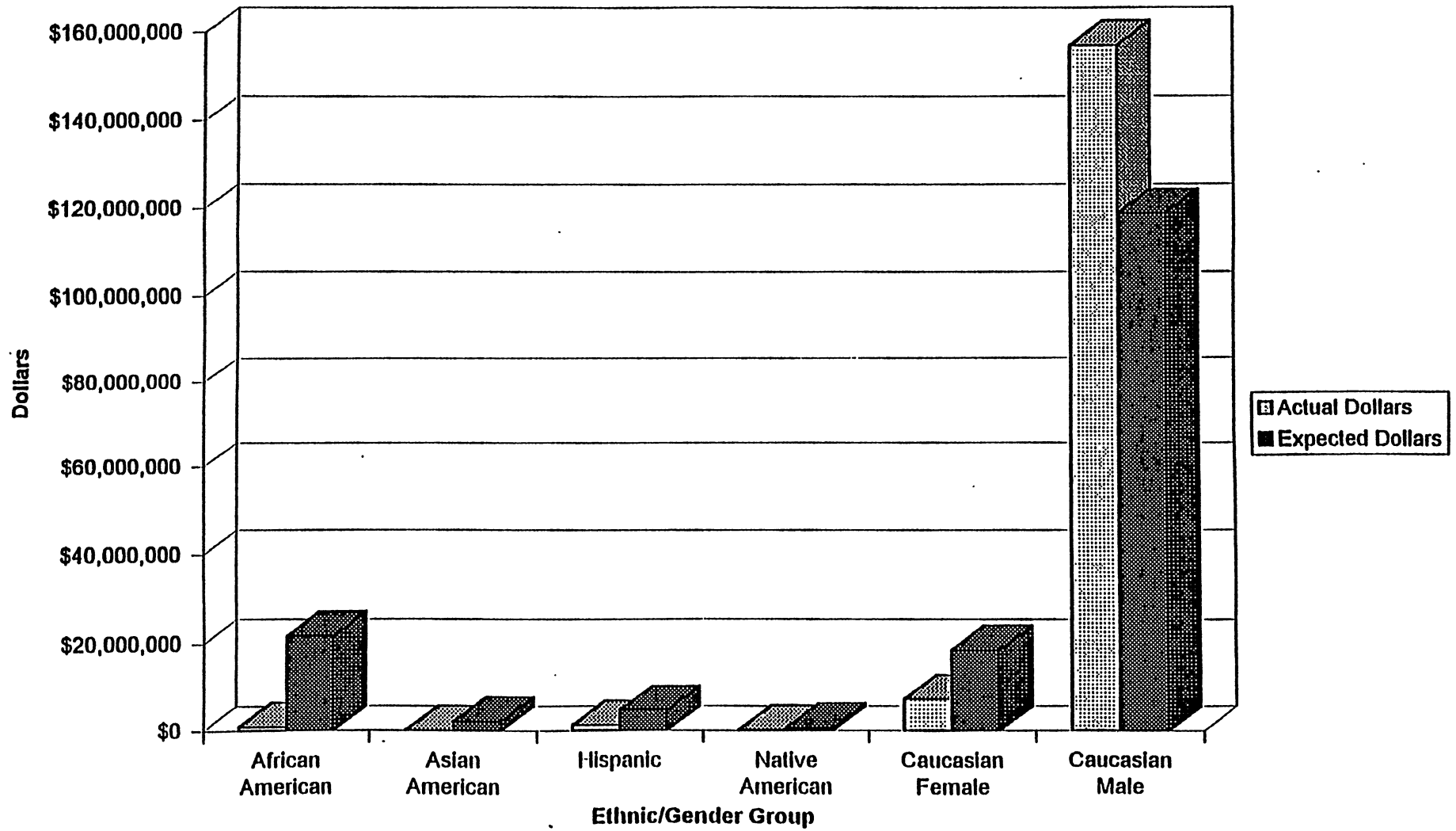
Minority and Gender	Actual Dollars	Utilization%	Availability%	Expected Dollars	Z	Net Dollars	Net %
Minority Female	\$270,183	0.16%	2.64%	\$4,395,466	-1.11	(\$4,125,283)	-93.85%
Minority Male	\$1,884,021	1.13%	14.81%	\$24,634,051	* -2.77	(\$22,750,030)	-92.35%
Caucasian Female	\$7,104,722	4.27%	11.19%	\$18,604,642	-1.58	(\$11,499,920)	-61.81%
Caucasian Male	\$157,056,015	94.43%	71.36%	\$118,680,782	* 3.67	\$38,375,233	32.33%
TOTAL	\$166,314,940	100.00%	100.00%	\$166,314,940			

MWBE Grouping	Actual Dollars	Utilization%	Availability%	Expected Dollars	Z	Net Dollars	Net %
MBE	\$2,154,204	1.30%	17.45%	\$29,029,517	* -3.06	(\$26,875,313)	-92.58%
WBE	\$7,374,905	4.43%	13.83%	\$23,000,108	* -1.96	(\$15,625,203)	-67.94%
MWBE	\$9,258,925	5.57%	28.64%	\$47,634,158	* -3.67	(\$38,375,233)	-80.56%

An asterisk (*) denotes statistical significance at the .05 level.

Chart 3.5

Disparity Analysis -- Construction Dollars



J. CONSTRUCTION CONTRACT DOLLARS LOST TO MINORITY BUSINESSES

The Net Number in Table 3.16, Column 7, represents the estimated dollars lost to MBE/WBEs. African Americans lost more than \$20 million dollars, Caucasian females \$11 million dollars, Hispanics \$3 million dollars, Asian Americans \$2 million dollars, and Native Americans \$452 thousand dollars.

K. SUMMARY OF DISPARITY ANALYSIS—DESIGN CONSULTANT DOLLARS FOR 1989-94

The design consultant dollars expended during the study period is depicted in Table 3.17 and Chart 3.6. More than 90 percent of those dollars went to Caucasian male owned businesses:

African Americans: Whereas African Americans represent 15.1 percent of available design consultants, they received 7.3 percent of the design consultant dollars.

Asian Americans: Whereas Asian Americans represent 1.6 percent of the available design consultants, they received 0.3 percent of the design consultant dollars.

Caucasian Females: Whereas Caucasian females represent 12.9 percent of the design consultants, they received 1.2 percent of the design consultant dollars.

Caucasian Males: Whereas Caucasian males represent 66.7 percent of the available design consultants, they received 90.7 percent of the design consultant dollars.

Hispanics: Whereas Hispanics represent 3.2 percent of the available design consultants, they received 0.2 percent of the design consultant dollars.

Native Americans: Whereas Native Americans represent 0.3 percent of the available design consultant dollars, they received none of the design consultant dollars.

Table 3.17

Disparity Analysis -- Design Consultant Dollars Fiscal Years 1989 - 94

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization%	Availability%	Expected Dollars	Z	Net Dollars	Net %
African American	\$1,836,223	7.37%	15.11%	\$3,762,288	-1.18	(\$1,926,064)	-51.19%
Asian American	\$79,888	0.32%	1.63%	\$405,819	-0.57	(\$325,931)	-80.31%
Hispanic	\$65,332	0.26%	3.29%	\$819,625	-0.93	(\$754,293)	-92.03%
Native American	\$0	0.00%	0.32%	\$80,631	-0.31	(\$80,631)	-100.00%
Caucasian Female	\$318,170	1.28%	12.90%	\$3,212,750	* -1.90	(\$2,894,580)	-90.10%
Caucasian Male	\$22,603,207	90.77%	66.75%	\$16,621,708	* 2.79	\$5,981,499	35.99%
TOTAL	\$24,902,820	100.00%	100.00%	\$24,902,820			

Ethnicity and Gender	Actual Dollars	Utilization%	Availability%	Expected Dollars	Z	Net Dollars	Net %
African American Female	\$0	0.00%	3.45%	\$859,565	-1.03	(\$859,565)	-100.00%
African American Male	\$1,836,223	7.37%	11.66%	\$2,902,723	-0.73	(\$1,066,500)	-36.74%
Asian American Female	\$0	0.00%	0.17%	\$42,978	-0.23	(\$42,978)	-100.00%
Asian American Male	\$79,888	0.32%	1.46%	\$362,840	-0.52	(\$282,953)	-77.98%
Hispanic Female	\$0	0.00%	0.86%	\$214,891	-0.51	(\$214,891)	-100.00%
Hispanic Male	\$65,332	0.26%	2.43%	\$604,734	-0.77	(\$539,402)	-89.20%
Native American Female	\$0	0.00%	0.00%	\$0	-- ----	\$0	-----
Native American Male	\$0	0.00%	0.32%	\$80,631	-0.31	(\$80,631)	-100.00%
Caucasian Female	\$318,170	1.28%	12.90%	\$3,212,750	* -1.90	(\$2,894,580)	-90.10%
Caucasian Male	\$22,603,207	90.77%	66.75%	\$16,621,708	* 2.79	\$5,981,499	35.99%
TOTAL	\$24,902,820	100.00%	100.00%	\$24,902,820			

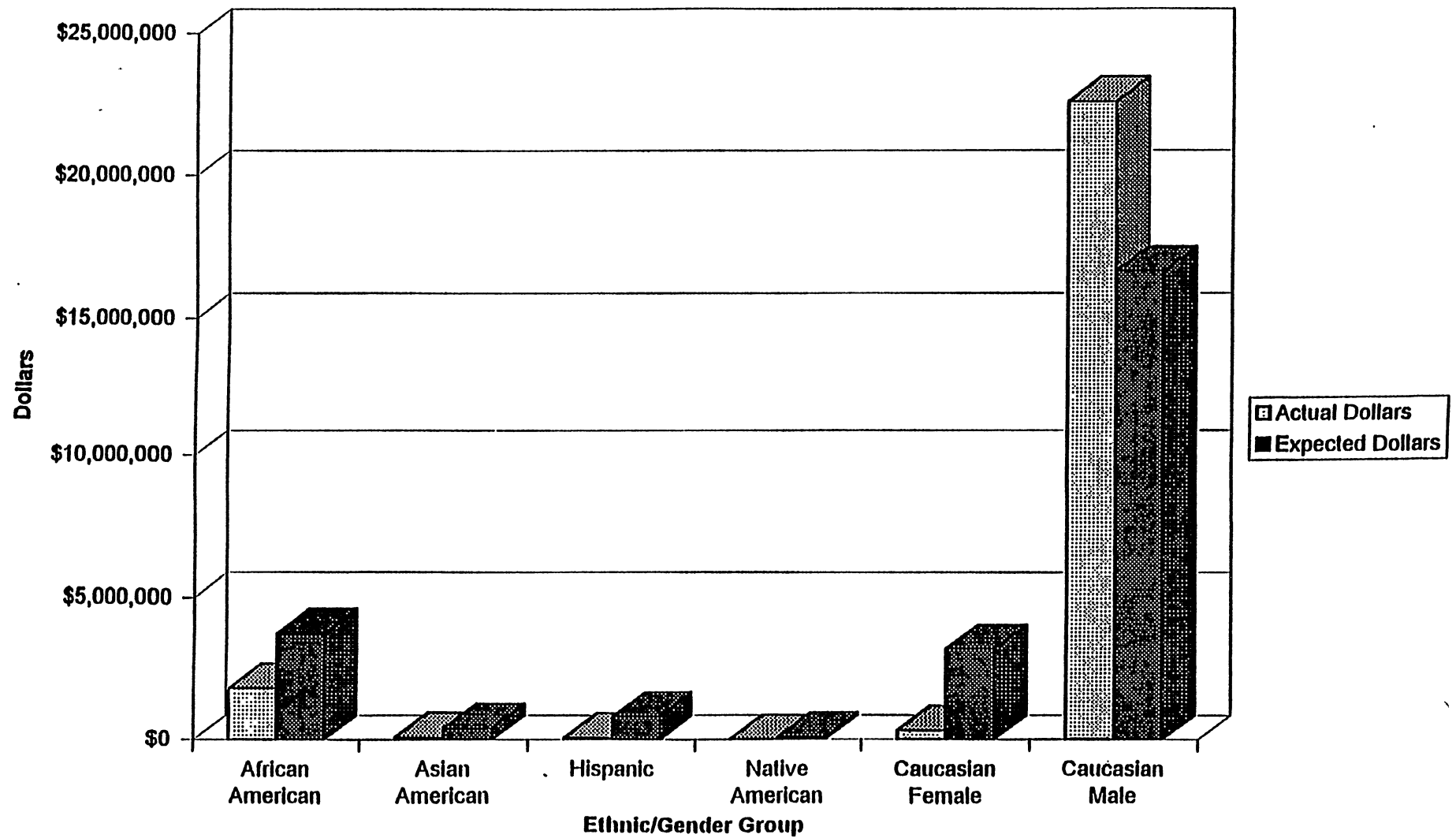
Minority and Gender	Actual Dollars	Utilization%	Availability%	Expected Dollars	Z	Net Dollars	Net %
Minority Female	\$0	0.00%	4.49%	\$1,117,434	-1.18	(\$1,117,434)	-100.00%
Minority Male	\$1,981,443	7.96%	15.87%	\$3,950,928	-1.18	(\$1,969,485)	-49.85%
Caucasian Female	\$318,170	1.28%	12.90%	\$3,212,750	* -1.90	(\$2,894,580)	-90.10%
Caucasian Male	\$22,603,207	90.77%	66.75%	\$16,621,708	* 2.79	\$5,981,499	35.99%
TOTAL	\$24,902,820	100.00%	100.00%	\$24,902,820			

MWBE Grouping	Actual Dollars	Utilization%	Availability%	Expected Dollars	Z	Net Dollars	Net %
MBE	\$1,981,443	7.96%	20.35%	\$5,068,362	* -1.68	(\$3,086,919)	-60.91%
WBE	\$318,170	1.28%	17.39%	\$4,330,184	* -2.32	(\$4,012,014)	-92.65%
MWBE	\$2,299,613	9.23%	33.25%	\$8,281,113	* -2.79	(\$5,981,499)	-72.23%

An asterisk (*) denotes statistical significance at the .05 level.

Chart 3.6

Disparity Analysis -- Design Consultant Dollars



L. DESIGN CONSULTANT DOLLARS LOST TO MINORITY BUSINESSES

Minority and women-owned companies lost in excess of \$5 million dollars in design consultant dollars over the study period. As depicted in Column 7 of Table 3.17, African Americans lost almost \$2 million dollars, Caucasian females more than \$2 million dollars, Hispanic business owners \$754 thousand dollars, and Asians and Native Americans \$325 thousand dollars and \$80 thousand dollars, respectively.

M. SUMMARY OF DISPARITY ANALYSIS—CONTRACT AND PURCHASE ORDER DOLLARS FOR 1989-94

The numbers of purchasing contracts and purchase orders are depicted in Table 3.18 and Chart 3.7. More than 96 percent of purchase orders and contracts went to Caucasian male owned businesses:

Disparity was significant for African Americans and Caucasian females.

African Americans: Whereas African Americans represent 16.9 percent of available consultants and vendors, they received 0.3 percent of the contract and purchasing order dollars.

Asian Americans: Asian Americans represent 0.9 percent of the available consultants and vendors, they received 0.4 percent of the contracts and purchase order dollars.

Caucasian Females: Whereas Caucasian females represent 10.5 percent of the available consultants and vendors, they received 2.2 percent of the contracts and purchase order dollars.

Caucasian Males: Whereas Caucasian males represent 67.6 percent of the available consultants and vendors, they received 96.6 percent of the contracts and purchase order dollars.

Hispanics: Whereas Hispanics represent 3.6 percent of the available consultants and vendors, they received 0.1 percent of the contracts and purchase order dollars.

Native Americans: Whereas Native Americans represent 0.2 percent of the available consultants and vendors, they received 0.05 percent of the contracts and purchase order dollars.

Table 3.18

Disparity Analysis -- Contract and Purchase Order Dollars Fiscal Years 1989 - 94

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization%	Availability%	Expected Dollars	Z	Net Dollars	Net %
African American	\$2,061,910	0.39%	16.94%	\$90,241,788	* -3.46	(\$88,179,878)	-97.72%
Asian American	\$2,493,429	0.47%	0.93%	\$4,972,580	-0.38	(\$2,479,151)	-49.86%
Hispanic	\$905,193	0.17%	3.67%	\$19,571,116	-1.46	(\$18,665,923)	-95.37%
Native American	\$275,424	0.05%	0.28%	\$1,479,151	-0.34	(\$1,203,727)	-81.38%
Caucasian Female	\$11,871,272	2.23%	10.53%	\$56,058,479	* -2.12	(\$44,187,207)	-78.82%
Caucasian Male	\$514,964,984	96.69%	67.64%	\$360,249,097	* 4.86	\$154,715,886	42.95%
TOTAL	\$532,572,211	100.00%	100.00%	\$532,572,211			

Ethnicity and Gender	Actual Dollars	Utilization%	Availability%	Expected Dollars	Z	Net Dollars	Net %
African American Female	\$355,877	0.07%	4.44%	\$23,648,589	* -1.66	(\$23,292,712)	-98.50%
African American Male	\$1,706,033	0.32%	12.50%	\$66,593,199	* -2.88	(\$64,887,166)	-97.44%
Asian American Female	\$335,353	0.06%	0.13%	\$716,624	-0.15	(\$381,271)	-53.20%
Asian American Male	\$2,158,077	0.41%	0.80%	\$4,255,956	-0.35	(\$2,097,880)	-49.29%
Hispanic Female	\$876,114	0.16%	0.81%	\$4,299,743	-0.56	(\$3,423,629)	-79.62%
Hispanic Male	\$29,079	0.01%	2.87%	\$15,271,373	-1.34	(\$15,242,294)	-99.81%
Native American Female	\$65,578	0.01%	0.09%	\$477,749	-0.20	(\$412,172)	-86.27%
Native American Male	\$209,846	0.04%	0.19%	\$1,001,401	-0.27	(\$791,556)	-79.04%
Caucasian Female	\$11,871,272	2.23%	10.53%	\$56,058,479	* -2.12	(\$44,187,207)	-78.82%
Caucasian Male	\$514,964,984	96.69%	67.64%	\$360,249,097	* 4.86	\$154,715,886	42.95%
TOTAL	\$532,572,211	100.00%	100.00%	\$532,572,211			

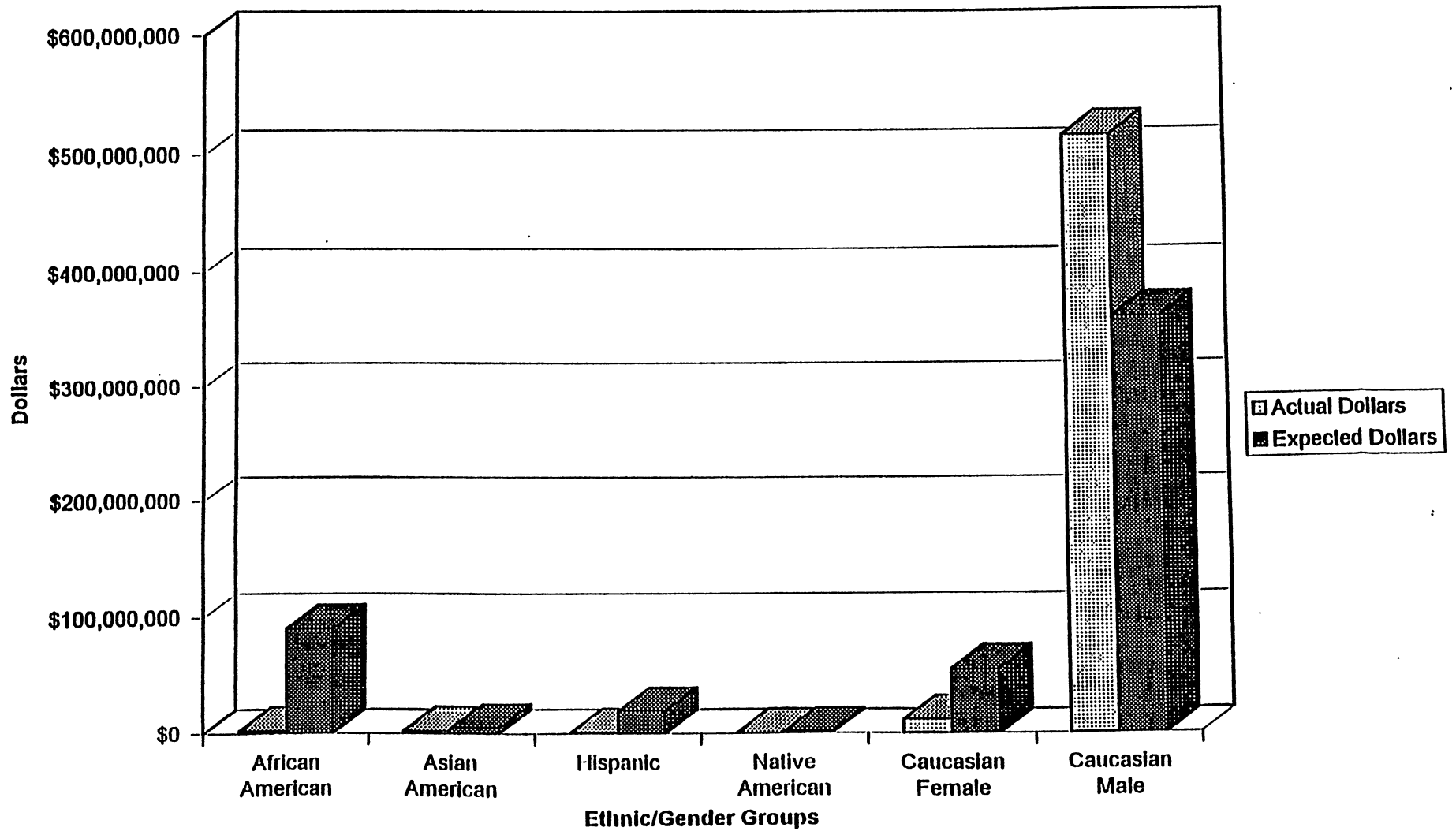
Minority and Gender	Actual Dollars	Utilization%	Availability%	Expected Dollars	Z	Net Dollars	Net %
Minority Female	\$1,632,921	0.31%	5.47%	\$29,142,706	* -1.78	(\$27,509,784)	-94.40%
Minority Male	\$4,103,034	0.77%	16.36%	\$87,121,930	* -3.30	(\$83,018,896)	-95.29%
Caucasian Female	\$11,871,272	2.23%	10.53%	\$56,058,479	* -2.12	(\$44,187,207)	-78.82%
Caucasian Male	\$514,964,984	96.69%	67.64%	\$360,249,097	* 4.86	\$154,715,886	42.95%
TOTAL	\$532,572,211	100.00%	100.00%	\$532,572,211			

MWBE Grouping	Actual Dollars	Utilization%	Availability%	Expected Dollars	Z	Net Dollars	Net %
MBE	\$5,735,955	1.08%	21.83%	\$116,264,635	* -3.93	(\$110,528,680)	-95.07%
WBE	\$13,504,194	2.54%	16.00%	\$85,201,184	* -2.88	(\$71,696,991)	-84.15%
MWBE	\$17,607,228	3.31%	32.36%	\$172,323,114	* -4.86	(\$154,715,886)	-89.78%

An asterisk (*) denotes statistical significance at the .05 level.

Chart 3.7

Disparity Analysis -- Contract and Purchase Order Dollars



N. CONTRACT AND PURCHASE ORDER DOLLARS LOST TO MINORITY BUSINESSES

MBE/WBEs lost more than \$154 million dollars in contracts and purchase orders during the study period. As depicted in Column 7 of Table 3.18, African American firms lost a significant \$88 million dollars and Caucasian females a significant \$44 million dollars in contract and purchase orders. For Hispanic firms, the number was \$18 million dollars, for Asian Americans \$2 million dollars, and for Native Americans \$1.2 million dollars.

O. SUMMARY OF DISPARITY—MISSOURI LOTTERY DOLLARS FOR 1989-94

Table 3.19 and Chart 3.8 depict the distribution of Missouri Lottery contract expenditure dollars for the period 1989-94. More than 89 percent of the \$84 million dollars expended during the study period were contracted to Caucasian male owned firms. While the dollar expenditure for Native American firms was higher than expected, there is disparity between available firms and those utilized by the Missouri Lottery for all other MBE/WBEs:

African Americans: Whereas African Americans represent 16.9 percent of available vendors, they received 3.0 percent of the Missouri Lottery dollars.

Asian Americans: Whereas Asian Americans represent 0.9 percent of the available vendors, they received 0.1 percent of the Missouri Lottery dollars.

Caucasian Females: Whereas Caucasian females represent 10.5 percent of the available vendors, they received 2.9 percent of the Missouri Lottery dollars.

Caucasian Males: Whereas Caucasian males represent 67.6 percent of the available vendors, they received 89.6 percent of the Missouri Lottery dollars.

Hispanics: Whereas Hispanics represent 3.6 percent of the available vendors, they received 0.2 percent of the Missouri Lottery dollars.

Native Americans: Whereas Native Americans represent 0.2 percent of the available vendors, they received 4.0 percent of the Missouri Lottery dollars.

Table 3.19

Disparity Analysis -- Missouri Lottery Dollars

Fiscal Years 1989 - 94

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization%	Availability%	Expected Dollars	Z	Net Dollars	Net %
African American	\$2,541,889	3.00%	16.94%	\$14,356,399	-1.03	(\$11,814,510)	-82.29%
Asian American	\$122,764	0.14%	0.93%	\$791,079	-0.23	(\$668,314)	-84.48%
Hispanic	\$215,031	0.25%	3.67%	\$3,113,533	-0.50	(\$2,898,502)	-93.09%
Native American	\$3,404,131	4.02%	0.28%	\$235,315	* 1.97	\$3,168,816	1346.63%
Caucasian Female	\$2,519,788	2.97%	10.53%	\$8,918,240	-0.68	(\$6,398,452)	-71.75%
Caucasian Male	\$75,922,324	89.61%	67.64%	\$57,311,361	1.30	\$18,610,962	32.47%
TOTAL	\$84,725,926	100.00%	100.00%	\$84,725,926			

Ethnicity and Gender	Actual Dollars	Utilization%	Availability%	Expected Dollars	Z	Net Dollars	Net %
African American Female	\$521,287	0.62%	4.44%	\$3,762,210	-0.51	(\$3,240,923)	-86.14%
African American Male	\$2,020,601	2.38%	12.50%	\$10,594,189	-0.85	(\$8,573,587)	-80.93%
Asian American Female	\$4,868	0.01%	0.13%	\$114,006	-0.10	(\$109,138)	-95.73%
Asian American Male	\$117,896	0.14%	0.80%	\$677,072	-0.21	(\$559,176)	-82.59%
Hispanic Female	\$74,989	0.09%	0.81%	\$684,038	-0.22	(\$609,050)	-89.04%
Hispanic Male	\$140,042	0.17%	2.87%	\$2,429,494	-0.45	(\$2,289,452)	-94.24%
Native American Female	\$8,712	0.01%	0.09%	\$76,004	-0.07	(\$67,292)	-88.54%
Native American Male	\$3,395,419	4.01%	0.19%	\$159,311	* 2.44	\$3,236,108	2031.31%
Caucasian Female	\$2,519,788	2.97%	10.53%	\$8,918,240	-0.68	(\$6,398,452)	-71.75%
Caucasian Male	\$75,922,324	89.61%	67.64%	\$57,311,361	1.30	\$18,610,962	32.47%
TOTAL	\$84,725,926	100.00%	100.00%	\$84,725,926			

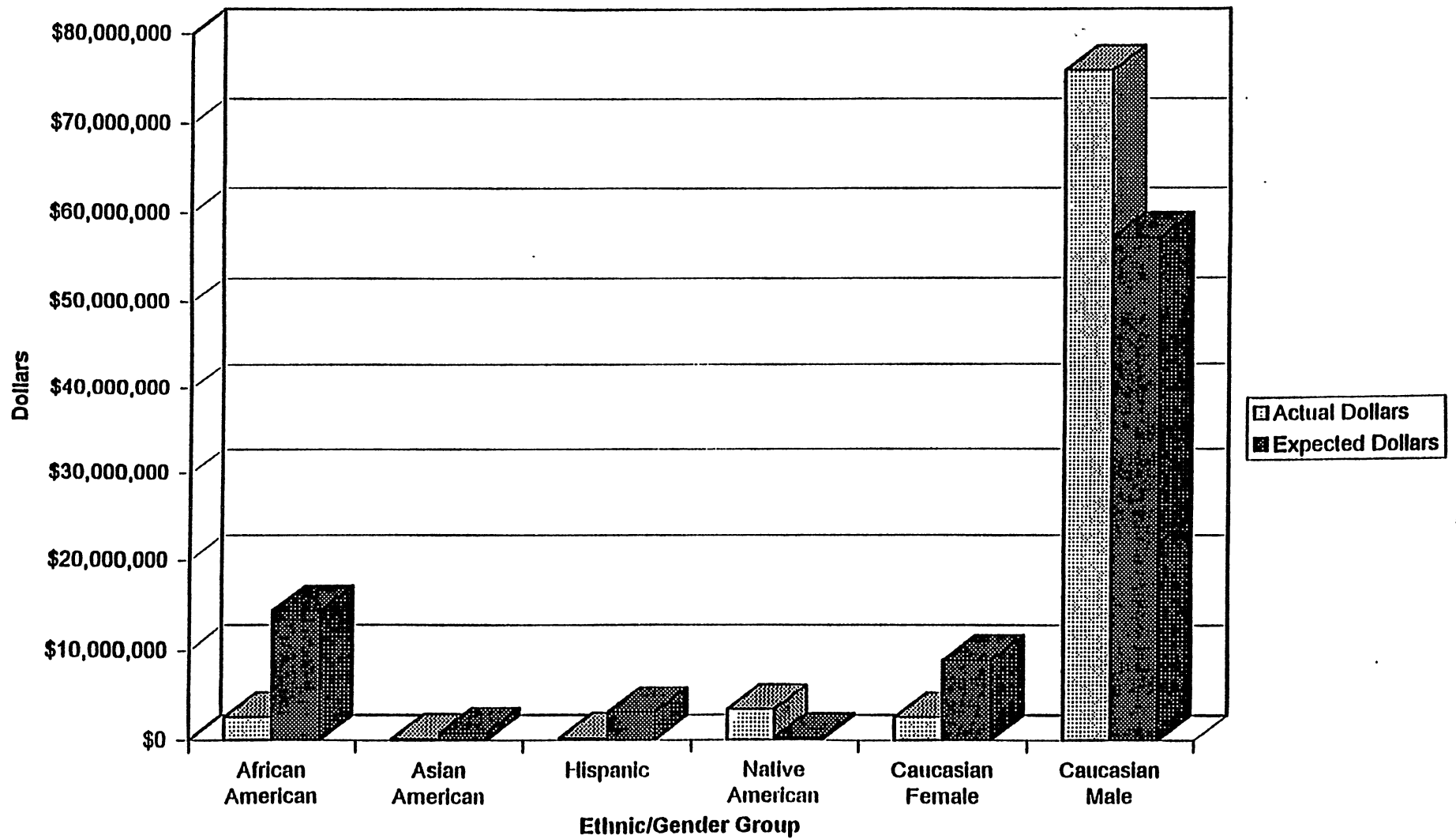
Minority and Gender	Actual Dollars	Utilization%	Availability%	Expected Dollars	Z	Net Dollars	Net %
Minority Female	\$609,856	0.72%	5.47%	\$4,636,259	-0.58	(\$4,026,403)	-86.85%
Minority Male	\$5,673,959	6.70%	16.36%	\$13,860,066	-0.72	(\$8,186,107)	-59.06%
Caucasian Female	\$2,519,788	2.97%	10.53%	\$8,918,240	-0.68	(\$6,398,452)	-71.75%
Caucasian Male	\$75,922,324	89.61%	67.64%	\$57,311,361	1.30	\$18,610,962	32.47%
TOTAL	\$84,725,926	100.00%	100.00%	\$84,725,926			

MWBE Grouping	Actual Dollars	Utilization%	Availability%	Expected Dollars	Z	Net Dollars	Net %
MBE	\$6,283,815	7.42%	21.83%	\$18,496,325	-0.97	(\$12,212,511)	-66.03%
WBE	\$3,129,644	3.69%	16.00%	\$13,554,499	-0.93	(\$10,424,855)	-76.91%
MWBE	\$8,803,603	10.39%	32.36%	\$27,414,565	-1.30	(\$18,610,962)	-67.89%

An asterisk (*) denotes statistical significance at the .05 level.

Chart 3.8

Disparity Analysis -- Missouri Lottery Dollars



P. MISSOURI LOTTERY DOLLARS LOST TO MINORITY BUSINESSES

In Table 3.19, Net Dollars in Column 7 indicates that \$18 million Missouri Lottery dollars were lost to minority businesses during the study period. Most dollars were lost to African American business owners who lost \$11 million. Caucasian females lost \$6 million, Hispanics lost \$2 million, and Asian Americans lost \$668,000. Only Native Americans and Caucasian males received more than their expected shares.

X. ANALYSIS OF FIRM CAPACITY

A. INTRODUCTION

The analysis of a firm's capacity is becoming an increasingly important factor in disparity studies. Although the existing study assesses the capacity of available firms, the issue remains key as programs, and the studies that support them, continue to be attacked. In establishing a valid statistical disparity in contract awards, a clear disparity must be established between the number of available minority owned firms in a specific trade and the total dollars awarded to those firms. Although there has been no clear articulation of an availability test, a number of courts, including the U.S. Supreme Court, a federal appellate court, and two district courts, have articulated what would be included in such an examination under particular circumstances. (See Part One, II.B.5.) The following presents an assessment of capacity of those firms included in the study.

B. QUALIFICATION PROCESS

1. Minority and Women Business Enterprise Certification

Pursuant to the *Croson* case, it is reasonable to assess the factors which might affect a firm's ability to perform under a public contract when bidding is the primary means of selection and the contracts are large. Following *Philadelphia*, in calculating the disparity index of the study, a formal M/WBE would be an adequate threshold for determining the "capacity" of potential firms.¹⁶⁹ In addition, formal certification by other reputable organizations and agencies would be a sufficient method of choosing the pool of available firms within the appropriate market area. Therefore, firms that have undergone an M/WBE certification process are appropriate for inclusion in the disparity study. The M/WBE firms to be included in this study are firms identified

¹⁶⁹ Id.

as certified M/WBE firms by the state of Missouri's vendor/bidding lists and by directories from other organizations employing an M/WBE certification process. In addition, certified firms identified from sources other than records from the State of Missouri were surveyed to determine their willingness to perform State contracts.

2. Size of Contracts

The courts in *Columbus* and *Dade County* were primarily concerned with the capacity analysis of available bidders for large contracts. Most contracts in the State of Missouri's Divisions were small, with 51.75% of all contracts less than \$10,000, and 80.94% of all contracts less than \$50,000. (See Table 3.20) Since the majority of contracts are small, the capacity necessary to perform the projects is minimal. Therefore, the fact that there is no process comparable to certification to assess the capacity of non-M/WBE firms is not an issue.

3. Competitive Bidding Qualifications

For a formal and objective assessment of a firm's capacity to competitively bid on a contract, explicit standards are needed to determine a responsive and responsible bidder. The state of Missouri's articulated bidding requirements and evaluation process were reviewed in order to establish the standards by which firms' capacity would be evaluated.

Pursuant to Missouri Code of State Regulations, agencies are required to engage in competitive bidding for purchases greater than \$1,000, with contracts greater than \$10,000 requiring a request for proposal (RFP) or invitation for bid (IFB) form of solicitation.¹⁷⁰ Contract awards are to be based on the lowest and best bid/proposal received in accordance with the terms and conditions set forth in the IFB.¹⁷¹

Neither the Missouri State Code nor specific agency guidelines, however, establish any minimal criteria, beyond price and M/WBE participation requirements, by which all firms submitting bids are to be evaluated. The criteria established for each project, goods, or service are established individually for each project. Price is usually the greatest, if not the sole, factor for small purchases. Larger contracts and contracts for professional services undergo an evaluation using more detailed specifications and capacity requirements. The requirements change from project to project along with the evaluation criteria. The only consistent criterion is price, although the weight or importance of price changes among projects. In many larger

¹⁷⁰ 1 CSR 40-050(1).

¹⁷¹ 1 CSR 40-050 (10).

Chart 3.10

Size of Design Consultant Contracts

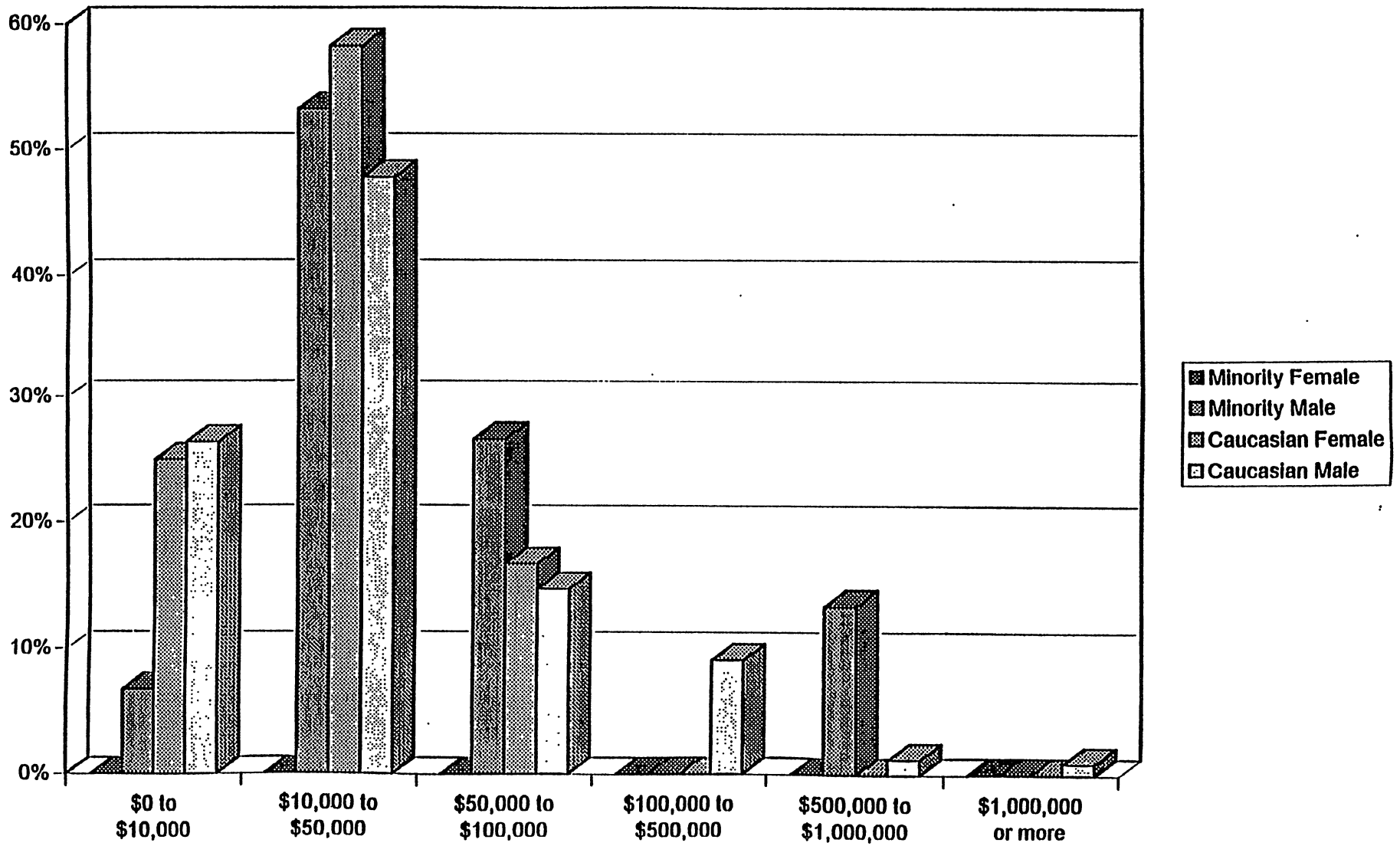


Chart 3.9

Size of Construction Contracts

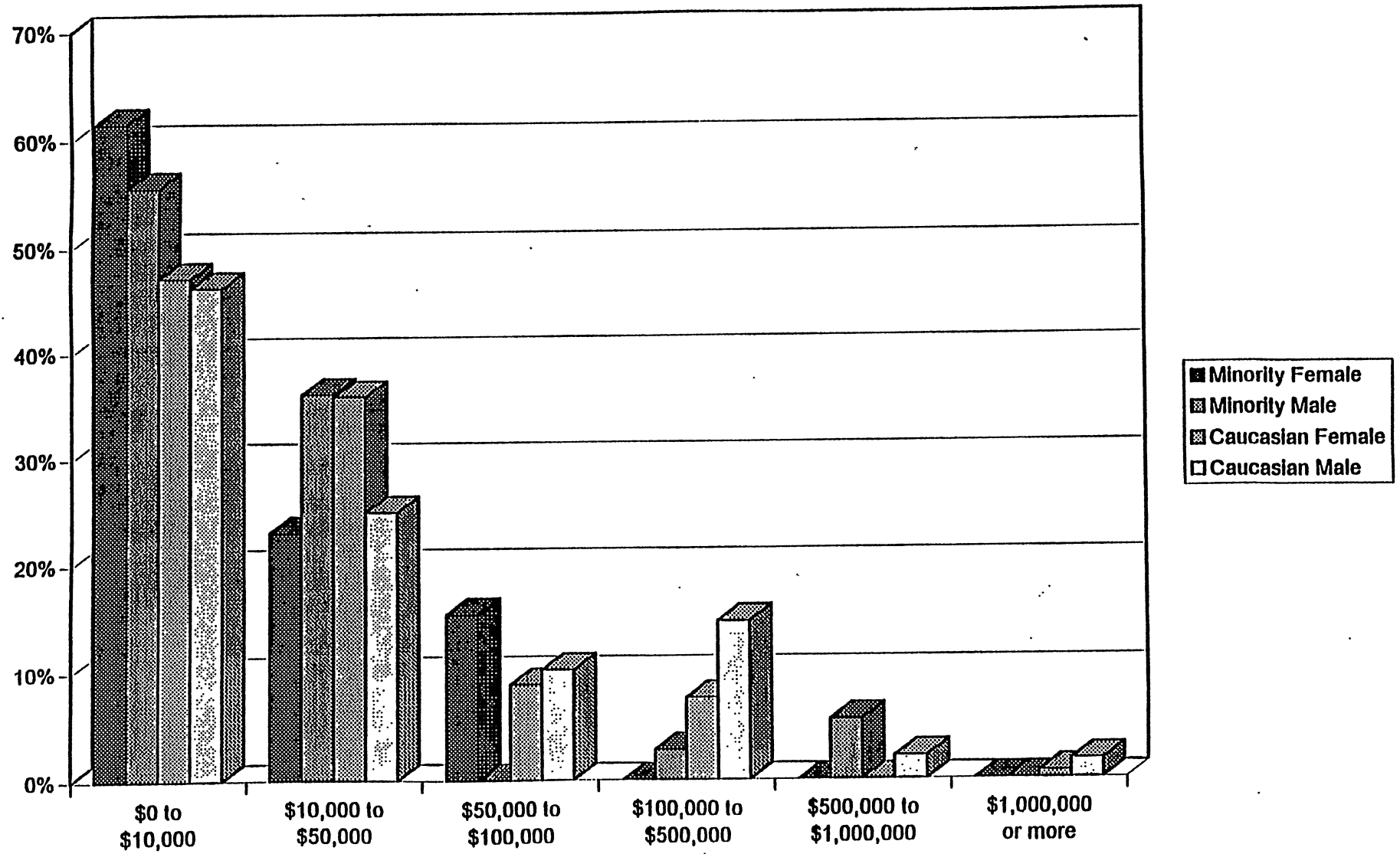


Table 3.20

Size of Contracts - All Industries

Size	Minority				Caucasian				Total Freq	Total Percent
	Female		Male		Female		Male			
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent		
Less than \$10,000	58	56.86%	117	47.56%	279	51.48%	3,827	51.84%	4,281	51.75%
\$10,000 to less than \$50,000	36	35.29%	93	37.80%	179	33.03%	2,107	28.54%	2,415	29.19%
\$50,000 to less than \$100,000	3	2.94%	18	7.32%	37	6.83%	589	7.98%	647	7.82%
\$100,000 to less than \$500,000	4	3.92%	12	4.88%	42	7.75%	654	8.86%	712	8.61%
\$500,000 to less than \$1,000,000	1	0.98%	5	2.03%	4	0.74%	102	1.38%	112	1.35%
\$1,000,000 or more	0	0.00%	1	0.41%	1	0.18%	103	1.40%	105	1.27%
Grand Total	102	100.00%	246	100.00%	542	100.00%	7,382	100.00%	8,272	100.00%

contracts, price remains a predominant factor, with a weighted importance of at least 40% and usually higher.

After evaluating the bidding process for Division of Purchasing and Materials Management, Division of Design and Construction, and the Department of Revenue Missouri Lottery, it is clear that the method by which non-M/WBE bidders are evaluated for capacity is inexact beyond the mere price of the product or service. In contrast, M/WBEs who bid are also required to undergo a certification process by which minority ownership, prior projects, insurance, and bonding issues are reviewed to evaluate their capacity to receive credit as an M/WBE bidding firm. In addition, majority firms submitting bids for prime contracts are required to provide the names of M/WBE subcontracting firms that are certified in the State of Missouri M/WBE. Therefore, MBE/WBE subcontractors are subject to a high level of scrutiny to determine their capacity to contract with the State.

To illustrate the contracting process and the evaluation criteria by which firms, and project proposals, are evaluated, a random sample of bid evaluations were drawn from the three Divisions and examined.

C. ASSESSMENT OF DIVISION OF PURCHASING AND MATERIALS MANAGEMENT BIDS

The analysis covers samples of bids made in response to an Invitation For Bid (IFB) by the Office of Administration, Division of Purchasing and Materials Management. The majority of the number of contracts for purchase orders and contracts, 4,474 out of 5,496 or 81.41%, were below \$50,000. (See Table 3.21)

Although the requirements for each project are specific to that project, the evaluation process remains routine. Each bidder is provided bid specifications in which the evaluation criteria are articulated along with the associated point scales. Each evaluation criterion is assigned a 0-100 point basis. (See Appendix A for Division of Purchasing and Materials Management Example Bids) Although the criteria vary among the projects, the main criteria can be categorized within two categories: price and product/service quality. All specifications and requirements in the Invitation For Bid (IFB) constitute minimum requirements. All bids must meet or exceed those specifications and requirements to remain eligible for the contract award.

Awards are made to the bidder whose bid 1) complies with all mandatory specifications and requirements of the IFB and 2) is the lowest and best bid, considering price, responsibility, and other criteria specified in the IFB. After meeting the IFB product/service specifications, each bid's prices are evaluated and assigned points. The bidder with the highest points receives the contract award. The most common evaluation criteria among the samples is price, with at least a 40% to 100% weight assigned to every project. The additional criteria include factors

Size of Contracts and Purchase Orders

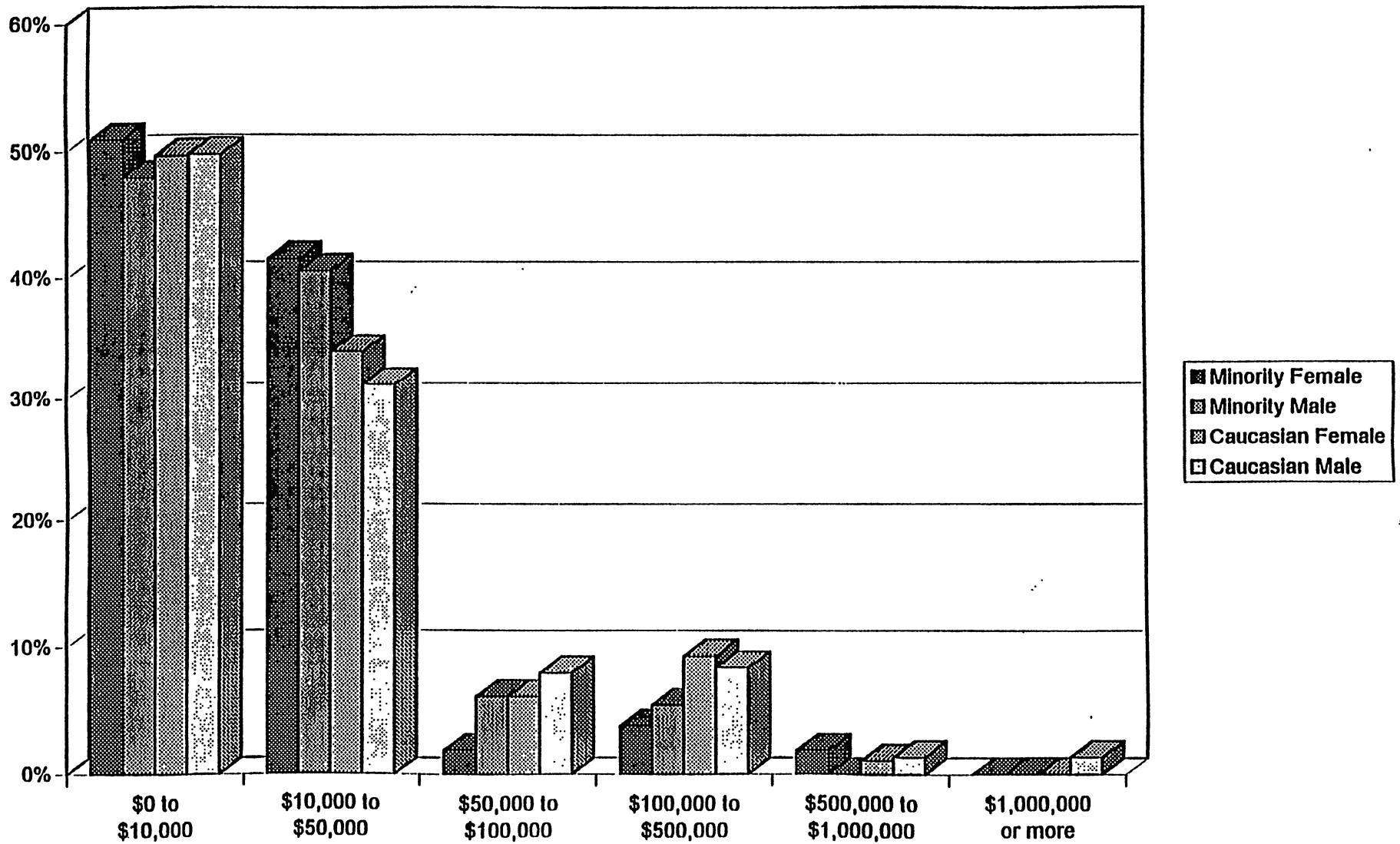


Chart 3.12

Size of Missouri Lottery Contracts

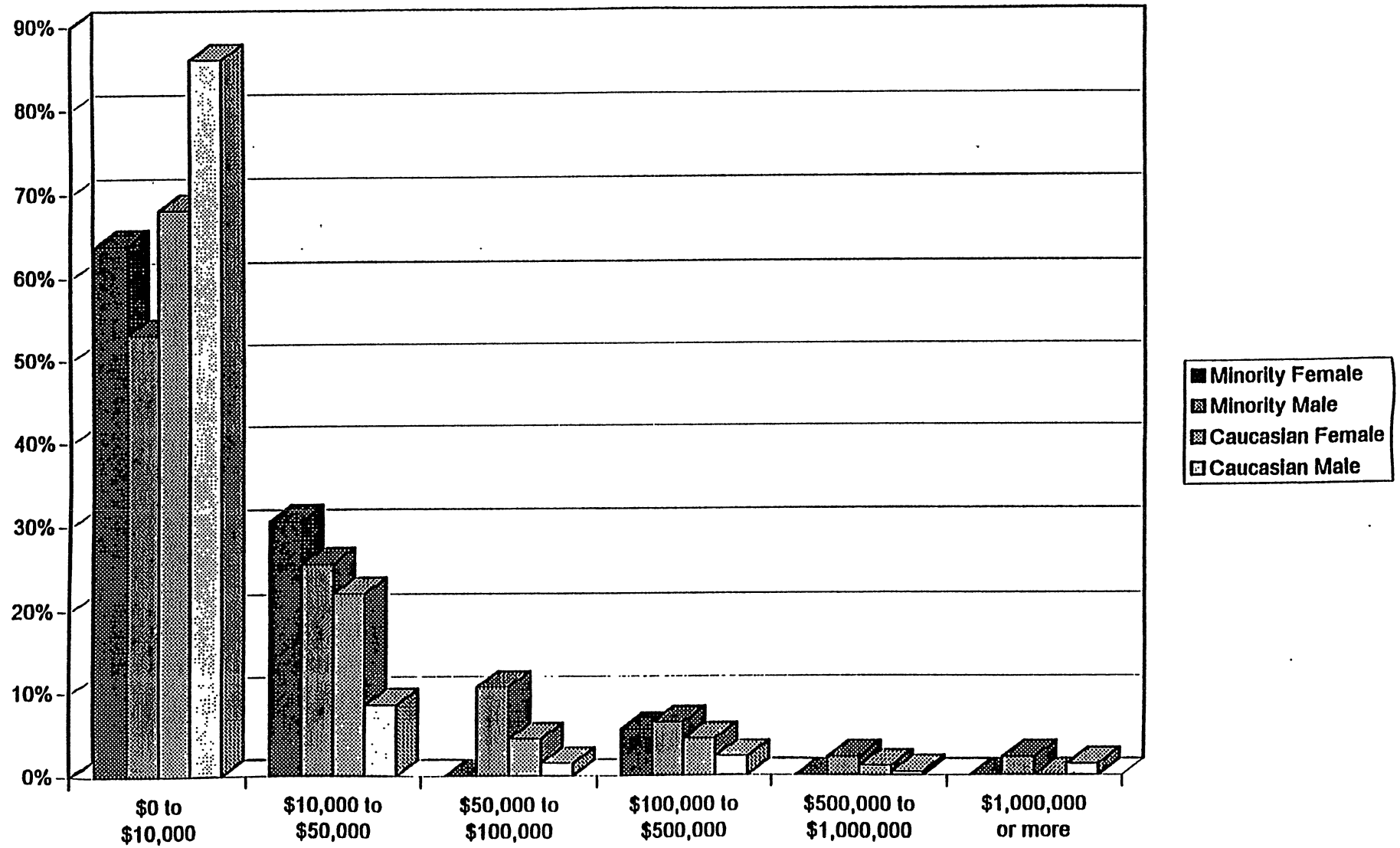


Table 3.21

Size of Contracts -- Each Industry

Fiscal Years: 1989 - 94

Construction Contracts Size	Minority				Caucasian				Total Freq	Total Percent
	Female		Male		Female		Male			
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent		
Less than \$10,000	8	61.54%	20	55.56%	75	47.17%	585	46.28%	688	46.74%
\$10,000 to less than \$50,000	3	23.08%	13	36.11%	57	35.85%	315	24.92%	388	26.36%
\$50,000 to less than \$100,000	2	15.38%	0	0.00%	14	8.81%	129	10.21%	145	9.85%
\$100,000 to less than \$500,000	0	0.00%	1	2.78%	12	7.55%	186	14.72%	199	13.52%
\$500,000 to less than \$1,000,000	0	0.00%	2	5.56%	0	0.00%	27	2.14%	29	1.97%
\$1,000,000 or more	0	0.00%	0	0.00%	1	0.63%	22	1.74%	23	1.56%
Grand Total	13	100.00%	36	100.00%	159	100.00%	1,264	100.00%	1,472	100.00%

Design Consultant Contracts	Minority				Caucasian				Total	Total
	Female		Male		Female		Male			
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent		
Size									Freq	Percent
Less than \$10,000	0	NA	1	6.67%	3	25.00%	90	26.39%	94	25.54%
\$10,000 to less than \$50,000	0	NA	8	53.33%	7	58.33%	163	47.80%	178	48.37%
\$50,000 to less than \$100,000	0	NA	4	26.67%	2	16.67%	50	14.66%	56	15.22%
\$100,000 to less than \$500,000	0	NA	0	0.00%	0	0.00%	31	9.09%	31	8.42%
\$500,000 to less than \$1,000,000	0	NA	2	13.33%	0	0.00%	4	1.17%	6	1.63%
\$1,000,000 or more	0	NA	0	0.00%	0	0.00%	3	0.88%	3	0.82%
Grand Total	0	NA	15	100.00%	12	100.00%	341	100.00%	368	100.00%

Table 3.21
(Continued)

Size of Contracts -- Each Industry
Fiscal Years: 1989 - 94

Contracts and Purchase Orders	Minority				Caucasian				Total Freq	Total Percent
	Female		Male		Female		Male			
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent		
Size										
Less than \$10,000	27	50.94%	71	47.97%	139	49.64%	2496	49.77%	2733	49.73%
\$10,000 to less than \$50,000	22	41.51%	60	40.54%	95	33.93%	1564	31.19%	1741	31.68%
\$50,000 to less than \$100,000	1	1.89%	9	6.08%	17	6.07%	399	7.96%	426	7.75%
\$100,000 to less than \$500,000	2	3.77%	8	5.41%	26	9.29%	420	8.37%	456	8.30%
\$500,000 to less than \$1,000,000	1	1.89%	0	0.00%	3	1.07%	68	1.36%	72	1.31%
\$1,000,000 or more	0	0.00%	0	0.00%	0	0.00%	68	1.36%	68	1.24%
Grand Total	53	100.00%	148	100.00%	280	100.00%	5015	100.00%	5496	100.00%

Missouri Lottery Contracts Size	Minority				Caucasian				Total Freq	Total Percent
	Female		Male		Female		Male			
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent		
Less than \$10,000	23	63.89%	25	53.19%	62	68.13%	656	86.09%	766	81.84%
\$10,000 to less than \$50,000	11	30.56%	12	25.53%	20	21.98%	65	8.53%	108	11.54%
\$50,000 to less than \$100,000	0	0.00%	5	10.64%	4	4.40%	11	1.44%	20	2.14%
\$100,000 to less than \$500,000	2	5.56%	3	6.38%	4	4.40%	17	2.23%	26	2.78%
\$500,000 to less than \$1,000,000	0	0.00%	1	2.13%	1	1.10%	3	0.39%	5	0.53%
\$1,000,000 or more	0	0.00%	1	2.13%	0	0.00%	10	1.31%	11	1.18%
Grand Total	36	100.00%	47	100.00%	91	100.00%	762	100.00%	936	100.00%

encompassing the ability of the firm and the quality of the proposed plan to complete the project.

D. ASSESSMENT OF DIVISION OF DESIGN AND CONSTRUCTION BIDS

The analysis covers samples of bids made in response to an Invitation For Bid (IFB) by the Office of Administration, Division of Design and Construction for various projects. The majority of contracts for design consultants, 272 out of 368 or 73.91%, were below \$50,000. The majority of contracts for construction projects, 1,076 out of 1,472 or 73.1%, were below \$50,000. (See Table 3.21)

Bidders are provided the technical specifications either for the design, or the construction of each project. Each bid must first meet all of the specifications and then all are evaluated on the basis of price as the determining factor. Evaluation sheets are completed listing each bidder, their associated base bids, and alternative bids encompassing additional project requirements.

Due to the complexity and uniqueness of larger projects, bidders are provided specific requirements that are unique to that project. Each bid is evaluated based on those stated requirements before the reviewer can proceed to the price scoring phase of the evaluation itself. The bids are then evaluated only on the basis of price, receiving some additional consideration for meeting the mandatory M/WBE subcontractor participation requirements. (See Appendix A for Design and Construction Bid Samples.)

E. ASSESSMENT OF DEPARTMENT OF REVENUE MISSOURI LOTTERY BIDS

The analysis covers samples of small/medium and large bids made in response to an Invitation For Bid (IFB) by the Missouri Lottery Commission for various products or services. The majority of the number of contracts, 766 out of 936 or 81.84%, are under \$10,000. (See Table 3.21)

Bids for each small/medium project were evaluated by a staff member in the Missouri Lottery office based on specific criteria established beforehand. Large bids were made similarly by IFBs, but were evaluated by more lengthy and technical criteria that are particular to each project.

Evaluation sheets were required for each bid, generally stating the criteria and assigned points with a maximum number of points possible between 0-100. In addition, short reports and calculations demonstrating the number of points received by each bidder were provided with the evaluation sheet. The calculations represented the points received by each bid based on their individual prices quoted. The

calculation most often employed for quoted prices was calculated by multiplying the lowest price divided by the bid price times 100.

1. Bid Evaluations

a. Small/Medium Contracts

Depending on the product or service, bidders were presented with specifications required for the contract, and occasionally, the criteria by which bids would be evaluated.

Based upon the staff evaluations, the overwhelming criteria was price, with a range of 50-100 percentage points allocated to that factor. (See Appendix A for Small/Medium Bid Samples) Each bidder was provided with pricing sheets detailing the specific products and services to be provided and a space for the bidder's proposed price. Bids are first reviewed for product specifications, features, reliability, and quality for the purpose of meeting IFB specifications. Bids cannot be evaluated unless they meet the minimum specifications articulated in the IFB. For bids requiring a service or installation, all bidders were required to carry and present proof of insurance and bonding.

The main criterion for evaluating bids is price, with an additional 15 points awarded for M/WBE firms. Some bids contain a "Quality of Proposal" category to which evaluators assign points for the ability of the firm to complete the project and the proposed plan but do not include a consistent basis by which all projects are evaluated.

b. Large Contracts

The bidding process for large projects is more specific depending on the service or product required. Bidders are provided IFBs, including detailed specifications, time line for bid submissions, general contractual requirements, and pricing required for each project. Each IFB varies, depending on the technical complexity of the product or the uniqueness of the service. For example, one bid requested pull-tab tickets. The IFB contained 47 pages detailing the requirements for providing pull-tab tickets for the state lottery system. Requirements included production requirements, quality standards, contract requirements, detailed proposal submission information, and pricing information.

Bids are evaluated by a team who write detailed reports evaluating the qualitative aspects of the product or service. Pricing calculations are provided by the purchasing department. The firm with the overall highest points received from all evaluators receives the contract. (See Appendix A for Large Bid Samples)

Due to the complex nature of the products/services for most large projects, the selection criteria vary more widely than for the small/medium contracts. The criteria are assigned a number of points, with cost being the predominant factor ranging from 40-60 points, followed by specific qualitative evaluations. After the bids are calculated, bidders are awarded up to 5 additional points if they qualify for MBE/WBE participation plans.

F. CONCLUSION

In evaluating the size of contracts for the State of Missouri, it is clear that most contracts are small and therefore require minimal capacity. It is clear from the federal court cases that a formalized and detailed assessment process is necessary to determine capacity for larger contracts. The Appellate Court in Philadelphia made certification the standard for determining which M/WBEs were ready, willing, and able for inclusion in the disparity study thereby qualifying them available for large and small contracts. However, criteria for qualifying non-M/WBEs are problematic since the State's evaluation of factors other than price when considering large contracts contains inconsistent variables for determining capacity. As a result, it is impossible to determine the capability standards by which non-M/WBEs can be evaluated for inclusion in the study. While the State of Missouri does not consistently follow procedures that would qualify non-M/WBEs' capacity to perform its work, the fact that most of its contracts are small eliminates the need to assess capacity. Given the fact that most of the State of Missouri's contracts are small, the firms included in the study, M/WBE and non-M/WBE, were properly chosen in conformity with the relevant case law.

Part Four

HISTORICAL ANALYSIS BACK TO DE-JURE SEGREGATION

I. INTRODUCTION

Getting a sense of the climate for contemporary minority businesses in Missouri requires more than a good look at the statistics of recent decades. Understanding current minority business opportunity also demands a long view of historical conditions that have restricted minority economic development and careful consideration of how those impediments have affected the level of availability and utilization of minority businesses for many generations, and influence or impugn the contemporary business environment.

Having arrived as slaves as early as 1719, emancipated in 1865, only to gain and lose their rights through repeated acts of de jure and tacit segregation well into the 1960s, African Americans in Missouri have endured the social, economic, and educational hardships of dehumanization, policing, segregation, disenfranchisement, impoverishment, and racial hatred that have been part of the minority experience throughout America. As a border state – buffer, transportation center, and nexus of trade between the slaveholding South and the industrial North – and as the gateway to the West, Missouri has been a crucible of changing social forces. From its controversial statehood as a slaveholding member of the Union in 1821 to the present exodus of young educated Black people from the South by way of St. Louis, Missouri has mirrored the schisms, growing pains, shifts, and inequities of an entire nation. The state's very geographic location has magnified the conflicts of interest surrounding the issues of slavery, segregation, and racial equality. While Missouri did not enact Black Codes nor Jim Crow laws as severe as its southern neighbors, as a state divided upon itself even in the Civil War, Missouri's history of race relations reveals social prohibitions and barriers that outlive restrictive covenants to this day. (Appendix B depicts Missouri's shifting racial demographics.)

Current discriminatory patterns and practices are partially determined by those that preceded them. Therefore, knowledge of the historical record is critical to developing an understanding of contemporary patterns and any discrimination which imbues it. What is less obvious is that regardless of the ethnicity of gender the level of business participation by a given group in the marketplace is determined by their past opportunities to gain professional experience, education, and economic resources. Long after the original barriers have been legally dismantled, this secondary level of exclusion remains a controlling factor for those who have been denied adequate education, skilled jobs, and access to particular industries in both the past and the present. In examining the historical record in detail, this

section of the report identifies specific practices of discrimination against minorities in Missouri that can be seen to have constrained business development among minorities throughout the State.

II. THE PSYCHOLOGY AND POLITICS OF SLAVERY AND SEGREGATION

A. BECOMING THREE-FIFTHS OF A PERSON

It is a matter of historical record that the first Black people to settle Missouri came from Haiti as the unwillingly chattel of French explorers. These arrivals were followed shortly by 500 slaves imported for the lead mines and in the 1770s and 1780s by hundreds more to tend Spanish-owned flax and hemp fields. British, French, and Spanish settlers preferred Black slaves to the more politically sensitive native American slaves, whose status threatened the felicity of settler-Indian trade.

For all settlers, Black slaves were a major boost to economic development – the conditions of their enslavement as profitable to European mining and farming enterprises as they were devastating to Black people. The availability of slaves and Missouri's rich soil inspired a massive European migration to the area. Deprived of all rights, the first African Americans were construed, simply, as one of the two most valuable resources of the New World. That, for purposes of taxation and representation, the framers of the American constitution, perceived slaves even as three-fifths of a person conveys a far greater sense of humanity than Black people were accorded for the first century of their tenure in this nation.

Napoleon welcomed the Louisiana Purchase in 1803 – by which the future Missouri became a US territory – as a means of avoiding the slave question, or more slave rebellions of the sort by which he had lost possession of Haiti earlier that year. Instead, his apprehensions about the volatility of the master-slave relationship were inherited by the new masters of the Territory. In 1803, of the 10,340 settlers in the area, Black people numbered 1,320 – or about 13 percent, enough to generate fears of rebellion. Therefore, in an attempt in 1804 to control and contain slaves, the Territorial Government enacted a new set of Black or Slave Codes, which forbade slaves to marry, to leave their owner's property without his permission, to carry guns, or to own property.

To further subdue the tensions of enslavement, in 1823, each county in Missouri was authorized to establish slave patrols – primitive, often abusive guards who enforced evening curfews and meted punishments without process. This surveillance

protected a vital industry: Because of its strategic location on the Missouri River and the insatiable demand for slaves for the southern cotton plantations, St. Louis became a major slave market, where humans were exchanged for cotton, rice, sugar, and indigo.

Fear of reprisal, various stirrings of conscience, and strong economic motivations prompted slaveholders to construct a moral defense of this inhuman institution on spiritual, theological, and anthropological grounds. The general argument ran that the condition of servitude was good for Black people, an inferior race that found grace through the shelter and example of the slaveholder and his family. Whites were encouraged to believe they could enhance their social status by becoming slaveowners. Meanwhile, law and everyday practice sought to frame slaves plainly as property, of the same cut as, say, livestock.

Dred Scott, a slave brought by his owner to the free states of Illinois and Minnesota, was thereby declared, by the Supreme Court in 1857, ineligible for freedom from his owner's widow because Congress lacked constitutional authority to prohibit slavery in any territory – authority, that is, to deprive an owner of his property. Chief Justice Roger B. Taney ruled that, slave or free, Black people were not citizens:

We think that they are not . . . and were not intended to be included under the word "citizen" in the Constitution, and therefore claim none of the rights and privileges . . . but such as those who held the power and the government might choose to grant them.¹⁷²

Exploited by a malevolent system that robbed them of their humanity, dignity, privacy, often housed ten to a cabin, separated – husbands from wives and mothers from children with no regard to family ties, isolated from other farms and towns, Missouri slaves were prohibited from assembling and kept in a state of abject submission and poverty.

This deplorable climate of servitude in Missouri resulted in isolated acts of insurrection, theft, even murder, but not of armed rebellion. Nonetheless, surrounded by free territory on three sides (Illinois, Iowa, and Kansas), Missouri slaveholders ameliorated their fears of slave desertion and retaliation by dispensing barbarous punishments for disobedience – from public lashings (39 strokes, the standard) to lynchings that continued into the present century. Beaten, blistered, humiliated, the slave was often spared disfigurement only to protect the owner's investment. These displays of brutality were designed not only to serve as examples to those who might

¹⁷² From Stanley I. Kutler, *The Dred Scott Decision: Law or Politics* Boston: Houghton Mifflin, 1967, quoted in Lori Bogle, "Desegregation in a Border State: The Example of Joplin, Missouri," *Missouri Historical Review* (nd):422

try to escape or to undermine productivity but to demonstrate the inhumanity of the punished, a classic ploy in the psychology of subjugation.

Freedmen, those who had purchased their manumission for a couple hundred to a couple thousand dollars, were a particular threat to the climate of enslavement, in that they belied the inferiority and the natural servility ascribed to slaves. Accordingly, in 1835 Missouri enacted a law requiring county courts to bind in apprenticeships from the age of 7 to 21 all free Black people and mulattoes. This was slavery by another name. The law further prohibited Black apprentices from working beside white apprentices without permission. Missouri also enacted in 1835 a law restricting the movement of free Black people by requiring a license for travel, which in turn required the posting of a bond.

Fear of reprisal, of abolitionist literature, of educated rebels personified by Nat Turner (1800-1831), inspired Missourians by 1847 to prohibit anyone from trying to educate a Black person. Education of Black people was a crime punishable by a minimum fine of \$500 or a sentence of up to six months. Regardless of individual accomplishments and circumstances, a Black person was generally regarded as a slave unless strenuously proven otherwise, the burden of proof always falling on the Black person; in defense of their realm, which was predicated upon the enslavement of one human by another, Missourians enacted countless measures to demonstrate, essentially, that the slave was not really human.

Opposition to this aberrant philosophy among non-slaveholding states led to the great conflagration that cost more than a million American lives and ultimately improved conditions for Black people vastly less than was hoped. By the beginning of the Civil War, the nation contained 488,000 free Black individuals and 4 million slaves. In Missouri, there were 3,572 free Black people and 100,000 to 115,000 slaves.¹⁷³ Following the debate with Frederick Douglass, in which the great Black statesman likened President Lincoln's unwillingness to recruit Black men, to a man fighting with one arm, in 1863 Lincoln issued the Emancipation Proclamation under serious pressure from abolitionists at home and abroad, and ordered all able Black men between 20 and 45 to the armed forces. About 8,400 of Missouri's Black men were recruited for the Union, and relegated to poorly armed, segregated units for less pay than white soldiers. The 65th infantry marched into battle without shoes, hats, uniforms, or food.¹⁷⁴ As a consequence of the Union victory, Black dignity and self-esteem bloomed, along with the proliferation of last names for Black people, attempts at opening Black schools, and a world of disappointment as former slaves sought new lives in a highly competitive, capitalistic society without benefit of money, training,

¹⁷³ U.S. Census of the Population, 1860.

¹⁷⁴ Julius K. Hunter, Foreword to Lorenzo J. Greene, Gary R. Kremer, Anthony F. Holland, *Missouri's Black Heritage*. St. Louis, Forum Press, 1980: ii.

education, or citizenship. Missouri continued to ban Black people from voting until the fifteenth amendment forced this issue in 1870. The state essentially discarded Black people as one of the more unfortunate spoils of war.

B. "SLAVERY DIES HARD": THE JOBLESS FREE

Life in the United States for the African American was drastically altered after the Civil War. Discrimination continued to pervade all areas of life. Black people were restricted from upward mobility in the job market yet found it difficult or impossible to support families as tenant share croppers on rural farms which was the only employment for most ex-slaves. Former slaves were thrust into a new social, political, and economic position. Many obstacles impeded the uneducated, non-propertied, penniless Black population's adjustment to a new way of living.

Racial violence ensued. Lynchings were often performed as examples to Missouri Black people who felt their participation in the struggle with the Confederacy warranted a decent life thereafter. Union General Clinton B. Fisk recorded the following observations of his travels about the state in 1865:

Slavery dies hard. I hear its expiring agonies and witness its contortions in death in every quarter of my district . . . I blush for my race when I discover the wicked barbarity of the late masters and mistresses of recently freed persons . . . I have no doubt but that the monster Jim Jackson [who lynched a Black man hired hand that year] is instigated by late slaveowners to hang or shoot every negro he can find absent from the old plantations. Some few have driven their black people away from them with nothing to eat or scarcely to wear. The consequence is . . . the poor blacks are rapidly concentrated in the towns and especially at garrisoned places. My hands and heart are full . . . There is much sickness and suffering among them; many need help.¹⁷⁵

Although Missouri did not enact all of the overt laws of segregation that ruled the South, tacit prohibitions were strictly observed. Black people were not granted seats inside streetcars, nor were they served in white restaurants or hotels.

The Civil Rights Act of 1875 attempted to ensure Black people access to public accommodations, but the Supreme Court's overruling in 1883 essentially initiated an open season for segregation, culminating in 1896 in *Plessy v. Ferguson*, in which Justice Francis M. Black declared that race differences justified separate but equal accommodations. Custom continued to bar Black people from Missouri hotels,

¹⁷⁵ Quoted by William E. Parish, *Missouri under Radical Rule*, Columbia, 1965: 107, in Greene, 76.

theaters, hospitals, and other public places – a condition of racial discrimination exacerbated by labor disturbances and the financial unease of the next several decades.

C. ST. LOUIS BLUES: BLACK ALIENATION THROUGH TWO WORLD WARS

In 1916, St. Louis passed a segregated housing ordinance prohibiting Black people from moving into white neighborhoods. They were restricted to the oldest, poorest, and most crowded neighborhoods near the riverfront, the old downtown and Union station. The Supreme Court outlawed the ordinance, but Black people continued to be segregated by private agreements and social rules. Kansas City also had an overcrowded Black slum. *The Kansas City Call* described it as “the highest density population in the city . . . [It was] the home of the Swill Center, the flyblown food, of cellar homes and leaking plumbing, of fire traps and tenement homes.” The borders of the neighborhood were continually bombed by racist neighbors to prevent expansion.¹⁷⁶

By the time America prepared for the first world war, Missouri’s Black people had been largely marginalized in the impoverished ghettos of St. Louis and Kansas City. Black people had elevated the pain of economic, social, spiritual alienation – the “St. Louis Blues” – to the level of an enduring art form and were leaving the state in unprecedented numbers.

Nonetheless, between World War I and II, nearly 1.5 million Black Americans migrated from the rural South to the urban North to escape even worse Jim Crow segregation laws and fears of lynching and the Ku Klux Klan. Katharine Corbett astutely notes, “Within the span of a single generation, the most rural segment of the American population became the most urban.”¹⁷⁷ The population of St. Louis grew from 35,000 in 1900 to over 100,000 in 1940, having established a community of segregated Black schools, churches, hospitals, newspapers, theaters, and social clubs “as old as the city itself.” Unfortunately, as is detailed in the following section on economic conditions, St. Louis Black people generally remained lowest on the social and economic ladder and continued to be held at bay by the majority culture. In 1934, for instance, of St. Louis’s 84 recreational centers, 10 were open to Black people, 4 of those were segregated, were 7 of the 70 city swimming pools.

Nearly a million Black people served in World War II, and domestically, as “a direct response to the rhetoric and goals of the war,” the Black community, especially the

¹⁷⁶ Theodore A. Brown and Lyle W. Dorsett, *K.C.: A History of Kansas City, Missouri*, Boulder, CO: Pruett Publishing Co., 1978, 185.

¹⁷⁷ Katharine T. Corbett and Mary E. Seematter, “No Crystal Stair: Black St. Louis, 1920-1940,” *Gateway Heritage* 8:2. Missouri Historical Society, Fall 1987: 9.

March on Washington Movement (MOWM), attempted to bring to national attention the apparent incongruity of defending minorities abroad and repudiating them at home. Roy Wilkins, editor of the NAACP's *Crisis*, observed that Black people do "not need the NAACP to show [them] that it sounds pretty foolish to be against park benches marked 'Jude' in Berlin but to be for park benches marked 'colored' in Tallahassee, Florida."¹⁷⁸ The legacy of slavery was strong across the land. As Patricia Adams observes, St. Louis in the 1940s reflected starkly the plight of the American Black population:

St. Louis reflected the national experience. In 1940 Black people in St. Louis could not attend major league baseball games, go to plays and movies at city theaters, eat in white-owned restaurants, swim in city pools, live in restricted covenant neighborhoods, or send their children to St. Louis and Washington Universities. A segregated city, it offered few exceptions. Only the city's streetcars and the Union Station restaurant were integrated.¹⁷⁹

Before the war, Missouri's Black leaders demanded defense jobs and integration of the military; by the end of the war, they had demonstrated, marched, picketed, and held rallies to end discrimination in all areas of life. Nonetheless, it was not until 1948 that the military was desegregated by order of Missourian President Harry Truman, and throughout the 1940s, Black people were barred from public accommodations, recreation facilities, lodging, eateries, and retail businesses. Pools began admitting Black people in St. Louis in 1950 and in Kansas City in 1953; hotels began admitting them in 1952, and a few restaurants admitted them shortly thereafter. Finally, over a decade later, Congress enacted the Public Accommodations Act, prohibiting discrimination in restaurants, theaters, stores, parks, and other public places.

D. THE LEGACY

The problem with implementing the *Brown* decision in Missouri was that most Black children lived in all-black neighborhoods. "Consequently, by the 1960s, even though most Missouri school districts were legally desegregated, most black students were still attending all-black schools."¹⁸⁰ The matter had not been fully resolved by the 1980s. In response to local grumbling over a proposed magnet school plan in 1986,

¹⁷⁸ From R. W. Logan, ed., *What the Negro Wants*, Chapel Hill, 1944: 130, quoted in Patricia L. Adams, "Fighting for Democracy in St. Louis: Civil Rights during World War II," *Missouri Historical Review* LXXX:1, Columbia, The State Historical Society of Missouri, October 1985, 59.

¹⁷⁹ Adams, 59.

¹⁸⁰ Greene, Kremer, and Holland, p. 143.

the Kansas City Times/St. Louis Post Dispatch took the long view in its advocacy of the state of Missouri finally getting the job of equal education done right:

The United States is still paying for the institution of human slavery that ended only in the last century, and it will be paying for the damages inflicted by segregation for a long time to come. The cost to government is nothing compared to the cost borne by the people who suffered it directly under these burdens.¹⁸¹

In calculating the economic potential of Black people in the current market, consideration must be given to the psychological toll Black people must contend with because of their long history as chattel and scapegoat; their exclusion from all but a few neighborhoods and from the most preferred jobs, travel, entertainment. For White people, they must come to grips with the slaveholders' dark rationalizations. The burden for both Black and White people are unestimatable.

III. ECONOMIC CONDITIONS

With the introduction of the power loom and cotton gin in the late eighteenth century, the agrarian life of the American South flourished, and with it the demand for slave labor. By 1764 African slavery had become a widely accepted and crucially important mainstay in the French-American economy. By 1810, there were 20,845 settlers and 3,618 Black people – which grew by 1820 to 66,016 white residents and 10,222 slaves. At the time of the Missouri Compromise, statehood in 1821, for many Missouri counties, slavery was one of the most important factors in the economy.

Because, however, Missouri's growing season was shorter than in the South, cotton was less central to the economy and broadened Missouri's agricultural base. Unlike the vast plantations of the South, the average Missouri farm therefore held only four slaves. Most slaves did serve as field hands – but with a diverse agriculture – producing many crops: hemp, tobacco, wheat, oats, hay, corn, and other feed grains as well as cattle, sheep, horses, and pigs. Missouri slaves also worked at many other jobs, as household servants, valets, butlers, handymen, carpenters, miners, railroad workers, bricklayers, deckhands, common laborers, maids, nurses, and cooks. Some were hired out, for a fee to their owner, to work in mines, for instance, for \$100 a year, on the railroads or brickyards for \$20 a month, or as deckhands, cabin boys, or stevedores for \$15 a month.¹⁸² Experienced in a broad range of

¹⁸¹ *St. Louis Post-Dispatch*, November 26, 1986.

¹⁸² Greene, Holland, and Kremer, 22-23.

work, Missouri slaves became adept and versatile in their roles – qualities that were rewarded under conditions of slavery and feared among free men.

A. FREEDMEN: UNFULFILLED EXPECTATIONS 1820-1910

In the 1820s, many Missouri free Black people earned a living as trappers, hunters, and guides to the West. Many Missouri slaves were put to a variety of less demanding tasks. Those slaves who were not denigrated mentally and physically by the cotton fields had a greater chance for upward mobility to the status of freedmen.

A newly freed Missouri slave could play off the skills he or she learned in bondage and eventually get jobs as wagoners, blacksmiths, carpenters, house servants, cooks, waiters, draymen, stonemasons, watchmen, drivers, painters, gardeners, hostellers, stable keepers, merchants, chambermaids, laundresses, or seamstresses.¹⁸³ Many free rural Black people farmed and raised livestock. The most successful freedmen became entrepreneurs and settled among the so-called “Colored Aristocracy” of south St. Louis, amassing small fortunes, and enjoying the success of businesses catering to the Black community. This elite also held the most high-paying jobs open to Black people: barber, caterer, steward, waiter, and steamboat porter. But for most, the life of the antebellum Black population was the harsh life of a slave.

In a pattern that would repeat itself in both world wars, the Civil War upset the economic structure of servitude. It brought freedom from slavery: Of the 115,000 Missouri slaves of 1860, 85,000 were in bondage by 1862, 22,000 by 1864. Unfortunately, in the aftermath of war and throughout Reconstruction, Black people experienced a nearly tragic period of adjustment. That Black people were not paid the difference between their wartime pay and the pay white soldiers received until a decade after the war suggests a minor repercussion of a general climate of discrimination and economic exclusion.

Many Black people sought to escape the racial postwar harassment of Missouri by heading north. Many who stayed worked with former masters or other whites, often for only room and board. On the other hand, as Black people in the South found it increasingly impossible to make a living on rural farms and migrated to Missouri cities in search of jobs and a better life, the population of St. Louis increased six-fold from 1860 to 1870. In 1870, however, more than two-thirds of the Black males employed in Missouri were still working as farm laborers.

The period of Reconstruction, far from providing freed slaves and other Black people generally the utopian vision of “40 acres and a mule” which fueled their hopes during the Civil War, undermined Black advances with economic chaos and

¹⁸³ Hunter, ii.

competition for which they were gravely ill-equipped. The withdrawal of federal troops from the South in 1877 left the Black community even less protected, more vulnerable to the vagaries of an unstable economy. As a result of the accompanying downward economic spiral, an exodus of Black people from the South via Missouri began in 1879 and was accompanied for decades by a Black migration from country to city as the agrarian way of life quickly made way for industrialization, urbanization, labor disturbances, and competition over too few jobs.

These city dwellers did not find it easy. The proceeds of Black business – men's furnishings, printing, minority newspapers, and other minority concerns amounted to only 8 percent of the total earnings of Black St. Louisans in 1900; more than 90 percent of the Black labor force worked as personal servants, factory workers, and unskilled laborers.¹⁸⁴ Although records indicate Blacks owned nearly 3,800 farms in Missouri in 1913, 55 percent of Missouri's Black population lived in urban areas in 1900, and nearly 67 percent by 1910, mostly confined to substandard segregated communities with deplorable sanitation, poor construction, disease, high mortality rates, and crime. Black people continued to flee, and as a result, Missouri then as now being a population-exporting state,¹⁸⁵ the Black population decreased from 1890 to 1910. Meanwhile, over 90 percent of Black workers served as servants, factory workers, and common laborers.

B. WORLD WAR ECONOMIES: THE SPOILS OF COMPETITION AND FEAR

As the Black community grew increasingly urbanized, those seeking jobs and upward mobility found only segregation and squalor. White Missourian Roger Baldwin, writing for the Missouri Association for Social Welfare, observed in 1914,

[S]o much of the problem lies in the unthinking, inconsiderate attitude of white people that no specific remedies for present conditions can be proposed which in themselves offer any solution.¹⁸⁶

In 1916, St. Louis passed, three to one, a segregation ordinance barring Black people from most non-ghetto neighborhoods. Half a century after emancipation, economic and social barriers that relegated most Black people to a life of poverty or poorly paid unskilled labor had barely budged.

¹⁸⁴ Katharine T. Corbett, "Missouri's Black History from Colonial Times to 1970," *Gateway Heritage*: 4:1. Missouri Historical Society, Summer 1983: 21.

¹⁸⁵ That is, as in 1980, more people emigrate from than immigrate to Missouri, per Milton D. Rafferty, *Missouri: A Geography*. Boulder, 180: 69.

¹⁸⁶ Greene, 105.

World War I brought with it short-term economic opportunity for minorities and long-term labor strife. Of the 404,348 Black people inducted into the US Army during WWI, 9,219 were inducted in Missouri between June 1917 and November 1918, to be used primarily not for combat but for transport, loading ships, and driving trucks. While European emigration to the US essentially stopped, white employers turned to southern Black people for workers in mines, railroads, shipyards, auto factories, and flour and meat-packing houses. The number of Black people engaged in industrial work spiraled from 552,845 in 1910 to 960,039 in 1920, while rural Black people moved to Kansas City and St. Louis for factory and railroad work.

In 1918 the Missouri State Negro Industrial Commission was formed to further demonstrate Black commitment to the country. Tragically, as barriers to lasting employment persisted throughout urban Missouri, many of the 10,000 who had come to St. Louis from rural Missouri looking for work were left jobless at the end of war.¹⁸⁷

As Black people began encroaching on all-white neighborhoods, xenophobia, a fear of immigrants provoked by the politics of war, combined with time-honored racial prejudices to form a vicious backlash of racial hatred in America. Increasing tensions were unleashed in numerous incidents, including a race riot in East St. Louis in 1917 in which 40 to 200 Black people were killed. Nor did the self-help envisioned by the Industrial Commission flourish in the 1920s.

The jazz era of the Harlem Renaissance was golden for such Black Missourians as Scott Joplin, Count Basie, Josephine Baker, Langston Hughes, and in the years between the wars a few Black entrepreneurs amassed incredible successes. An example was Annie Malone of the Poro Beauty industry (a model for the current Avon and Mary Kay industries which eventually grossed over a million dollars annually), various Black owned insurance companies, and assorted law firms.

The Black community of Jefferson City even experienced its own renaissance in the 1920s and 1930s, during which, Gary R. Kremer observes, "a new propertied class of Black people emerged in the city."¹⁸⁸ Surrounding the Lincoln Institute during its transition to Lincoln University, this successful Black middle class was drawn by the higher salaries offered Black professors at the University and the opportunity to purchase homes within walking distance of the school.¹⁸⁹ But the roaring '20s occasioned few economic opportunities for mainstreaming Missouri's Black

¹⁸⁷ Ibid., 113.

¹⁸⁸ Gar R. Kremer, "A New Way of Doing Black History: The Cultural Resources Study," *Gateway Heritage*:5:4. Missouri Historical Society, Spring 1986: 22.

¹⁸⁹ Greene, 119.

communities, and “the disadvantages of segregation far outweighed any financial advantages gained by a few Black businesses.”¹⁹⁰

Although some Black people moved into professions, most worked as menial laborers at salaries significantly lower than white workers. The steel, iron, meat-packing, glass, brick, railroad and tobacco industries in St. Louis employed significant numbers of Black workers, mostly in unskilled positions. Many others, particularly women, worked in service jobs. A few unions, including the Longshoremen and Hodcarriers, admitted Black people, but most skilled trade unions barred Black people completely. Of the 900 Black Pullman porters in St. Louis in 1914, only 81 had participated in A. Phillip Randolph’s Negro Brotherhood of Sleeping Car Porters and Maids as late as 1929.

Unions served Black people no better in the ‘30s. During the Depression, Black people were the last hired and first fired, as white unions became increasingly hostile to Black people. The hardest hit were the shack-dwelling sharecroppers of southeast Missouri, who were eventually evicted for demanding conditions less demeaning than their meager tenancy subsistence and demanding for farm workers 15 cents an hour. Even the major construction projects within the Black community were hired out to white contractors who refused to hire Black people – Poro College, Homer G. Phillips Hospital, and the People’s Finance Company. By 1930, 43 percent of St. Louis’ Black workers were unemployed.

As economic opportunities for both Black and White people dwindled, whites began migrating in greater numbers, dramatically altering the demographics of the state. From 1940 to 1980, the white population increased 27 percent, the nonwhite population (90 percent of which was Black) 128 percent, much of it centered in increasingly overcrowded, segregated urban communities. In St. Louis, for instance, the nonwhite population grew from 13.4 percent in 1940 to 47.6 percent in 1980.¹⁹¹

During World War II, labor shortages resulting from the draft again increased the demand for Black laborers, who swept into urban industrial centers to work in wartime factories and foundries in such numbers that St. Louisans lamented the dearth of domestic workers. Unfortunately, the boom in the defense industry in 1940 and 1941, generally “left Blacks behind. The armed services discouraged them from joining, war contractors did not train them, and defense plant managers hired Black people only when they exhausted the supply of white employees.”¹⁹²

¹⁹⁰ Greene, 119.

¹⁹¹ Raffery, 69.

¹⁹² Adams, 59.

Echoing the patterns of WWI, racial tensions resulted. Although the threat of demonstrations in Washington prompted Roosevelt to appoint in 1941 the first Fair Employment Commission (FEPC), St. Louis labor unions, except for a few CIO locals, resisted the Urban League's attempts in 1942 to place Black people in higher skilled jobs or in plants operated on government contracts. Black layoffs at the US Cartridge plant in May 1942 resulted in a series of rallies and walk-offs, and in 1943 picketers protested Southwestern Bell's unwillingness to hire Black women.

These protests – a watershed of St. Louis' World War II civil rights activities – resulted in a few minor victories, such as the telephone company's agreement to open a Black neighborhood office with Black employees. All in all, some estimate that the activities of MOWM resulted in 16,000 jobs for Black St. Louisans.¹⁹³ These events serve essentially, however, to point out the severe historical racial tensions that are bred by job competition. In October 1944, the FEPC opened an office in St. Louis and found that though "St. Louisans did not object strenuously to integration, business and public officials feared change."¹⁹⁴ To wit, although the desegregation of the military in 1948 created major employment opportunities, by 1967 Black people constituted only 5 percent of the army's 11,000 officers.

After the war, about 8 percent or 297,000 of the state's 3,954,653 population were Black people, more than three-fourths of them in the Kansas City and St. Louis areas. Again, the postwar economy, an era of unprecedented growth and material gain for the majority, made no promises to Black workers. Former soldiers occupied unskilled positions as domestic or menial workers. Of the 109,024 Black people working in Missouri in 1950, 59,081 or 54 percent were in service jobs, 18,000 in common labor, 23,305 in industry, mostly unskilled jobs, and 15 percent were unemployed. The gross average annual income was 58 percent that of whites.¹⁹⁵

C. THE ECONOMIC LEGACY: 1950 TO THE PRESENT

While African Americans were strident in their effort to remove institutional barriers to equal employment and compensation, those barriers were formidable. By 1950, nearly half of Black families in St. Louis received some form of aid from the government, with 42 percent of Black women working. By contrast, 20 percent of white women worked.¹⁹⁶ By the late 1950s, while over one-sixth of Kansas City families reported incomes over \$10,000, only one in 25 of African American families

¹⁹³ Interview in 1970 with Theodore McNeal of the CCRC, with Patricia Adams, in Adams: 75.

¹⁹⁴ Adams, 73.

¹⁹⁵ Greene, 129.

¹⁹⁶ Brown, 185.

were in that range. Twenty percent of the population attended college, but not even 11 percent of African Americans attended. Only two in ten graduated high school.

In 1960, the Human Rights Commission found that most Black workers in urban Missouri remained “on the lowest level of employment.”¹⁹⁷ The nonwhite unemployment rate was 10 percent, 21 percent were common laborers, 3 percent professionals, and 8 percent craftsmen, foremen, or similarly skilled. Black state employees generally provided janitorial or other menial services, only 2 percent earning more than \$4,000 annually. In 1963 Black people constituted two-thirds of the unemployed in St. Louis. Studies in 1968 reported again that widespread discrimination had kept Black people in lowest paying jobs.

In 1970, the average Black family income was 25 percent below that of the average white family, and the Black unemployment rate was triple that of whites. Amid these abominable statistics bred the unrelenting discrimination thwarting business formation. Despite the disenfranchisement and economic containment, some notable Black businesses did emerge – drug stores, mortuaries, groceries, gas stations, realty firms, cleaning services, barber and hair salons. These businesses proliferate in St. Louis and Kansas City, most continuing to cater to a strictly segregated market; some Black individuals held managerial positions in such major corporations as AT&T.

But the inequities persisted. In 1970, the Black population of Missouri stood at 10.3 percent of the total population. 86 percent of those lived in St. Louis or Kansas City areas. The income of the average Black family was still 25 percent lower than that of the white family. Three times as many Black individuals as whites were unemployed.¹⁹⁸

By the end of the 1970s, the flight from the cities to the suburbs was well underway. The white middle class with stable, well-paying jobs moved out of the urban areas. This left unemployed and underemployed people of color nowhere to turn to improve their economic conditions; starting a business in the city became even more difficult without a residential consumer base. The majority of the Black population in Missouri, those living in St. Louis and Kansas City, found themselves in a situation not much improved since the days of de jure segregation.

In 1980 Lorenzo J. Greene of Lincoln University noted, “The masses of blacks (in Missouri) are ill-fed, under-employed, poorly-housed, and undereducated. Gains have been made but the victory has not been won.”

¹⁹⁷ Greene, 146.

¹⁹⁸ Greene, 163.

Following the national economic downturn of the 1970s and the recession of the 1980s, more people moved out of Missouri than moved in. Half the exodus was among the Black population, who left at a rate 11 times that of whites. According to Black St. Louis Deputy Controller Z. Dwight Billingsly in 1993, "It all boils down to jobs and career opportunities for those who decide to leave. We've been noticing a reduction in the Black MBA Association as some of our best people are deciding to bag it St. Louis is known as a not-good place for Black people to work and progress."¹⁹⁹ Statistics prove that Mr. Billingsly was correct. In 1990, 29 percent of the Black population were below poverty level in Missouri, while only 11 percent of White population fell into that category. Black per capita income was only \$8,576, compared to \$13,563 for whites.²⁰⁰

One major factor in the poverty of Black citizens in Missouri is unemployment. The rate in 1990 was 15.5 percent for Black men and 12.5 percent for Black women, each still three times the rate for whites.²⁰¹ Black individuals in Missouri cannot find jobs or business opportunities. If they do find work it is often in unskilled positions which offer no training or chance for promotion.

According to the 1990 census, of Missouri's total population of 5,117,073, 546,850 are Black, 60,429 Hispanic, approximately 22,000 native American, 38,000 Asian, and 2,500 Pacific Islander. Minorities, at 14 percent of the population, however, cannot find the resources, instruction, or experience necessary to start their own businesses. Minority-owned businesses account for less than 4 percent of businesses in the state population. The situation for Blacks is the most disproportional; at 12.2 percent of the population, they own only 3 percent of businesses.²⁰²

The cost of centuries of economic exclusion, barriers to employment and growth, and pernicious patterns of social stigmatization, is still being tallied. Many Black people who have enjoyed an education are heading out, at an average age of 25, for the more promising and open economic climates of such cities as Seattle, Minneapolis, and Chicago. Black professionals are now not willing to accept the less professional and lower paying jobs. As one displaced Missourian, a Black tax accountant who left in 1988 puts it, "I think St. Louis could suffocate the lives, the ambitions, of the young people, especially the Blacks. There's no one opening doors for you . . . I didn't go

¹⁹⁹ St. Louis Post-Dispatch, February 4, 1993. Note, however, that the Missouri Shifting Racial Mix Chart included in this section, derived from census figures, shows an increase, albeit negligible, in the Black population, from 513,385 in 1980 to 548,208 in 1990. The Post-dispatch also reported on June 21, 1989 that Missouri's Black population as of 1985 was 545,000.

²⁰⁰ Missouri State Census Data Center *1990 Census of Population and Housing*, page 2.

²⁰¹ Ibid., 3.

²⁰² United States Bureau of the Census and the United States Department of Commerce *1987 Economic Censuses: Survey of Minority-Owned Business Enterprises, Summary*. Issued August 1991.

through four years of college to get your coffee.”²⁰³ Although there are now more Black college graduates and skilled workers in all realms, the glass ceiling for minorities is lower in Missouri than in many other states. Old patterns persist; discrimination, especially in the face of bitter job shortages and professional competition, dies hard in Missouri. (Appendix B contains a table depicting Missouri’s shifting racial demographics.)

IV. EDUCATIONAL BARRIERS

The enduring value and power of education can perhaps best be appreciated, ironically, in Missouri’s strenuous proscriptions against Black individuals receiving it. Prompted by fear of reprisal, of abolitionist literature, of educated rebels such as Nat Turner (1800-1831), Missourians in 1847 prohibited anyone from trying to educate a slave – a crime punishable by a minimum fine of \$500 or a sentence of up to six months. Education may never have been more acutely valued. Unfortunately, the importance of restoring education to the minorities to whom it was denied has yet to be expressed convincingly in Missouri programs.

After the Civil War, the 62nd and 65th US Colored Infantry elevated the Black tradition of shared community to a new level of dignity and pride by contributing \$6,300 to the creation of the new Lincoln Institute, the foremost center for Black education in the state, in the capital, Jefferson City. In addition to the Lincoln Institute, a St. Louis Black Board of Education sponsored four schools, and the Freedmen’s Bureau and the American Missionary Association, facing violent opposition, attempted to open schools throughout the state. These efforts were often met with brutal recriminations from the white majority – from arson attacks on Black schools in St. Louis and Fulton to physical violence to female teachers.

Against this opposition, with the aid of a few humanitarian and Christian agencies, Black individuals continued to attempt to educate themselves. Black advocate James Milton Turner was given responsibility in 1870 for setting up Black schools throughout Missouri on behalf of the American Missionary Association. He observed,

[I]n sections where the largest number of colored people are found there is a preponderance of disloyal and former slave holding peoples, who in most cases are opposed to the establishment of these black schools.²⁰⁴

²⁰³ Op cit., St. Louis Post-Dispatch.

²⁰⁴ Greene, 82.

Because of widespread opposition to whites teaching in Black schools and the dearth of educated Black teachers, Turner also faced the problem of locating competent teachers for these schools – a poorly paid job at \$46 monthly, as opposed to \$82 monthly at white schools. This challenge inspired Turner in his successful petition to the Missouri legislature in 1870 to support the Lincoln Institute as a training school for Black teachers. State support for the Institute did not, however, mean acceptance of Black individuals in Jefferson City, where racial discrimination continued to be the norm.

LEARNING AS A PRIVILEGE OF FEDERAL CITIZENRY

In 1891, a Black father in Grundy County appealed to have his four children attend an all-white school. The children walked six miles to a Black school although the white school was only a mile away. In *Lehew v. Brummell*, the Supreme Court denied the father's request and maintained the biracial system. They claimed the fifteenth amendment "protected only the privileges of federal citizenship", which education was not.²⁰⁵

It appeared, however, that learning was a privilege of white citizens, and variously afforded Black citizens as the state saw fit. In 1917, Missouri spent \$1,764,334 educating its 926,000 Black people, while the District of Columbia spent 13 times that amount educating its 65,000 Black individuals. Black facilities were grossly inadequate. One of State Superintendent of Schools Charles A. Lee's first resolves upon taking office in 1923 was to improve the African American schools he found so appalling.²⁰⁶ Yet, of St. Louis's 21 high education facilities in 1934, only two – a normal and a nursing school – admitted Black people.²⁰⁷

Education continued as a main stage in the fight for equality for Black people in Missouri. In December 1938, the Supreme Court ruled that either one Lloyd Gaines, a graduate of Lincoln University who was rejected from the University of Missouri Law School because he was Black, should be admitted to the University of Missouri Law School, or the state must provide him equivalent professional training.

The Supreme Court did not abandon the "separate but equal" doctrine of 1896 nor order the 16 states with racially separate institutions of higher learning to integrate them.²⁰⁸ It merely confirmed that Missouri must provide professional education for its qualified Black citizens. In response, the University of Missouri, rather than

²⁰⁵ Missouri Advisory Committee *Report to the United States Commission on Civil Rights on Desegregation of Schools in Missouri*. July 1959. page 20.

²⁰⁶ Greene, 112.

²⁰⁷ Ibid., 119.

²⁰⁸ Walter C. Daniel, "W.E.B. DuBois at Lincoln University: Founder's Day Address, 1941," *Missouri Historical Review*(nd): 344.

admitting Gaines, set up a law school at Lincoln University in the summer of 1940. In a related case, rather than allowing Lucille Bluford (who was to become the managing editor of the *Kansas City Call*) to enter the University of Missouri School of Journalism, the state legislature appropriated \$65,000 to establish a Lincoln University School of Journalism – for three students.

For nearly a decade after War World II, Missourians went to great lengths to exclude Black people from educational institutions. After a century of segregation, the University of Missouri began slowly admitting Black people only in 1950. Finally, in 1954 in *Brown v. the Board of Education of Topeka, Kansas* public school segregation was declared a violation of the equal protection clause of the Fourteenth Amendment of 1868. But prohibitions against integration died nearly as hard as slavery. Although civil rights groups celebrated the landmark decision, many Missourians, both Black and White, found desegregation profoundly challenging.

As a footnote to the history of Lincoln University, the story of the Black community that was located near and around Lincoln University in Jefferson City demonstrates the misguided governmental attempts in the 1960s to help the minority community and the disregard and discrimination practiced against Black businesses. For the decades the university served as a preeminent institution for higher learning for Black people and then as an integrated community of scholars, it had drawn a concentration of Black property owners to the university and downtown areas, which helped to develop a “Black entrepreneurial class” in the city.

In the early 1960s, after the university had been transformed into an institute for special education, urban renewal projects in Jefferson City first demolished the largely Black area around the school, specifically the street where many Black-owned businesses were situated. Elderly residents of Jefferson City still express bitterness when referring to this example of destruction of an important part of the community.²⁰⁹

From emancipation to this day, segregated housing has meant segregated school districts and segregated schools has meant inferior education. By the mid-1960s, 40 percent of all Black Missouri students attended schools that were 95 percent Black. In St. Louis, Blacks constituted 60 to 70 percent of school drop-outs. A 1975 study by the Missouri Human Rights Commission reported that students remained segregated throughout the state. Seventy-two percent of St. Louis schools and 63 percent of Kansas City schools had student bodies with 95 percent of one race. In 1978, 90 percent of Missouri’s minority students attended schools in minority districts – and the only university to achieve desegregation of any significance was the formerly Black Lincoln University.

²⁰⁹ Kremmer, Gary R. “A New Way of Doing Black History: The Cultural Resource Study” *Gateway Heritage*:5:4, Spring 1985, 23.

Although many more minority students are graduating from Missouri colleges and universities in the 1990s, many find little opportunity to apply their educations to appropriate work in their home state. Inequities in high school and university degrees between Black and white individuals persist, many Black youth finding no incentive to finish their studies. As drop-out rates hold steady and educated Blacks depart, Missourians face still another wave in the tide of discrimination that has lowered the playing field for Black Americans for centuries.

V. WOMEN IN MISSOURI: THE SOCIAL, POLITICAL, AND BUSINESS ENVIRONMENT

Describing St. Louis in 1944, the March on Washington Movement declared "There is no city in the nation where employment conditions are as bad for colored girls and women."²¹⁰ More than 20,000 Black women were available for work in St. Louis, 70 percent of them seriously needing work, but out of 325 defense plants only the two largest, US Cartridge and Curtiss-Wright, hired Black women.²¹¹

Throughout Missouri's history, women generally have worked hard with little or no pay, recognition, or potential for advancement. As is the case throughout the country, women have been discouraged from working outside of the home. When they have joined the labor force to compensate for the poor wages of their husbands, to support themselves and their children (a situation more common among Black women, twice as many of whom joined the work force to work to compensate for their husbands' extremely low or nonexistent wage), they found only menial tasks with wages much lower than a man's or a white woman's. Influenced by societal norms prescribing women's primary duties in the home, many chose careers as nurses, social workers, seamstresses, and teachers, the logical and socially acceptable extensions of female roles.²¹²

Throughout its history, Missouri has boasted many highly successful, accomplished women professionals, the first of whom was perhaps Missouri's most famous Black seamstress, Elizabeth Keckley, who saved the earnings from her trade and bought her freedom in 1855, later to become the employee and confidante of Mrs. Abraham Lincoln. Other stellar figures in history of women in Missouri include political activist-lawyer Phoebe Wilson Cousin, the

²¹⁰ Adams, 72, from a MOWM press release.

²¹¹ Ibid.

²¹² Pedersen, Sharon "Married Women and the Right to Teach in St. Louis, 1941-1948" *Missouri Historical Review*, 141.

second female lawyer in Missouri when she graduated from Washington University in St. Louis in 1872.²¹³

Another activist, Kate Richards O'Hare (1877-1948) spent five years in jail for opposing the draft during World War II, wrote many letters about prison life, and actively fought for reform of the prison system. Missouri has also been home to many notable women writers, including journalist Sara Lockwood Williams (1891-1961), who conducted interviews with Hitler and Mussolini and became visiting professor to Yenching University in China; groundbreaking novelist Kate Chopin (1851-1904), whose *The Awakening* (1899) explored the uncharted territory of female and sexual independence; and Fannie Cook (1893-1949), who wrote extensively about sharecroppers and racial problems in southeast Missouri. The professional successes of these women, however, are, of course, exceptional.

Even confined to limited roles, women have fought for independence and self-determination. In 1933, over 2,000 women dressmakers in St. Louis struck for the right to unionize with the International Ladies' Garment Workers Union. Although the silk dress workers earned recognition within two months, the cotton dressmakers remained on the picket line for years, some until 1935.²¹⁴ Many women were discriminated against because they worked and attempted to organize.

On the other hand, although, as Katharine Corbett reports, the "garment industry paid low wages for long hours spent under poor working conditions . . . it frequently offered creative and satisfying work, relatively steady employment, and the companionship of other women." In her interviews with retired dressmakers, Corbett observes a shared consciousness among women, of themselves as workers, an experience central to their lives that fostered a positive self-image. Although the garment industry has all but vanished from St. Louis, its history demonstrates valuable lessons of the value of work in the lives of Missouri women, and their own motivation and ability as tradeswomen.²¹⁵ The story of the garment workers underscores the misfortune that women so motivated and so deserving were not afforded more roles, more satisfying work, more rewards, and or simply more economic opportunity.

World War II did bring many more women into the labor force. Workers were needed to fill the labor vacuum left by departing soldiers. When men returned from war, however, women were expected to return to the home. The discrimination against women, especially married women, can be seen in the story of the St. Louis Board of Education. By 1930, women made up four-fifths of all teachers in the United States.²¹⁶ Despite women's important role in teaching, until 1947, the St. Louis Board of Education dismissed women upon marriage.

²¹³ Lippert, Anne Marie "Missouri Women Have Played a Role in American History" *Columbia Missourian*. March 8, 1981.

²¹⁴ Katharine T. Corbett, "St. Louis Women Garment Workers: Photographs and Memories" *Gateway History*:2:1, Summer 1981, 20.

²¹⁵ *Ibid.*, 24.

²¹⁶ Pedersen, 141.

The first challenge to this practice came in 1941 when Mildred Basden and Anita Weis lost their teaching jobs because of a rule that stipulated that the marriage of any woman in the employ of the Board is considered as a resignation, and no married woman was to be appointed to a position. In 1947, after many long legal battles, the Missouri Supreme Court ruled that the removal of teachers because of marital status was illegal. Basden and Weis won back their jobs and a minor battle for women in the work force.

Since the 1950s, Missouri women have continually made economic gains, moving into jobs unrelated to the home or childrearing. Women have also taken small political steps. In 1967, the Missouri Commission on the Status of Women was formed, although, having received no state economic support through 1972, it was to some a disappointment.

In the 1980s, the number of women working in Missouri grew dramatically. While the population of Missouri grew by 4 percent and the work force by 11 percent, the increase was largely due to women joining the work force for the first time. The proportion of women working increased from 46 percent to 53 percent. Nearly 75 percent of women with children below the age of 18 became members of the Missouri work force in the '80s – a jump of 23 percent since 1970.²¹⁷ In their 1993 report, the Missouri Women's Network reported that more than half of Missouri women with children under the age of 6 were working full-time. On the other hand, as of 1987, women comprised less than 30 percent of business owners in Missouri. Those businesses were concentrated in Kansas City, which boasted 34 percent of women-owned businesses, St. Louis 10 percent and the State capitol, Jefferson City, had only 100 women-owned businesses.²¹⁸

Women in Missouri have made political progress but have also hit limits that have their roots in the state's and the country's history. Although growing numbers of women have gained entrance to the world of employment, many still cannot earn enough to support themselves and their children. 45 percent of all women workers nationwide earned less than adequate wages, \$6.33 per hour. Only 10 percent of all women workers earned a higher than adequate wage, estimated at \$12.67 per hour.²¹⁹

In 1993, one out of 34 state senators was a woman, and 37 women served as representatives. Fewer than one-third of the members of state boards, commissions and task forces are women.²²⁰ Gains in salary and career options and political representation and influence have been accompanied with an enduring recognition of the "glass ceiling." Women have been allowed to advance only so far. Women still are not equally represented in decision-making

²¹⁷ "Women are a major growth factor in the state work force" *Versailles Leader Statesman*. August 27, 1992.

²¹⁸ United States Bureau of the Census and United States Department of Commerce *1987 Economic Censuses: Women Owned Businesses*. Issued August 1990.

²¹⁹ Missouri Women's Network *Women's Action Plan 1993*. St. Louis County, Missouri. page 10.

²²⁰ Missouri Women's Network, page 28.

positions. Women still do not earn as much as men in comparable positions, nor can women secure the training, capital, or support necessary to become independent business owners.²²¹

VI. DISTRIBUTION OF MISSOURI'S POPULATION AND NUMBER OF BUSINESSES

A. MISSOURI'S POPULATION

Table 4.1 depicts the 1980 and 1990 racial/ethnic distribution of Missouri's population, according to the U.S. census. Minority groups increased over the decade. While representing approximately 10 percent of the total State population in both decades, the African American population increased by 6.5 percent, relative to the other groups. However, both Asian and Native American people are the fastest growing groups in the state. While both represented less than 1 percent in both periods, relative to other groups, Asians increased by 58.6 and Native Americans by 50.7 percent over the 1980 to 1990 period. Hispanics also experienced moderate growth at 16.5 percent. The relative percentage of Caucasian people decreased slightly, from 87.7 to 87.0 percent.

²²¹ Ibid., page 15.

**Table 4.1 Racial/Ethnic Characteristics of the Missouri
Population, 1980 and 1990**

Racial/Ethnic Groups	1980 (%)	1990 (%)	Percentage Change (%)
African American	513,385 (10.3)	546,850 (10.6)	6.5
Asian	24,962 (0.5)	39,580 (0.7)	58.6
Native American	14,820 (0.2)	22,334 (0.4)	50.7
Hispanic	51,853 (1.0)	60,429 (1.1)	16.5
Total Minority	605,020 (12.2)	669,193 (12.9)	10.6
Total Caucasian	4,346,308 (87.7)	4,486,000 (87.0)	3.2
Total	4,951,328	5,155,193	4.1

Source: U.S. Census of the population. This distribution represents an estimate as Hispanics can also designate African American or Caucasian racial groups.

B. NUMBER OF BUSINESSES

Table 4.2 represents the distribution of businesses in the State in Census Bureau economic surveys. While representing less than one percent of Missouri businesses in both 1982 and 1987, Hispanic Origin and Other Minorities businesses increased by 62.6 percent and 67.7 percent, respectively. For African American businesses, while increasing 22.2 percent over the five year period being considered, they were less than 3 percent of the total businesses each of those years. Women-owned businesses represented about 30 percent of the total and increased 46.4 percent between 1982 and 1987. Finally, non-minority male owned businesses represented more than two-thirds of the total businesses each census year, while increasing their numbers by 32 percent.

**Table 4.2 Racial/Ethnic Distribution of Missouri Businesses,
1982 and 1987**

Racial/Ethnic Groups	1982	1987	Percentage Change
African American	6,404 (2.8)	7,832 (2.6)	22.2
Hispanic Origin	767 (0.4)	1,247 (0.4)	62.6
Other Minorities	1,308 (0.5)	2,193 (0.7)	67.7
Total Minority	8,479 (3.9)	11,272 (3.7)	32.9
Women-owned	59,879 (27.3)	87,658 (29.4)	46.4
Non-minority Male Owned	150,309 (68.7)	198,362 (66.7)	32.0
Total Non-minority	210,188 (96.1)	286,020 (96.2)	26.5
Total	218,667	297,292	26.4

Note: Minority-owned business figures include counties with 250 or more of the minority owned businesses. Also, minority women business owners are double counted, to some unknown degree because the minority-owned groups include some minority women and the woman-owned group also includes some minority women.

Part Five

ORAL HISTORY ANALYSIS

I. PURPOSES OF ORAL HISTORY TESTIMONY IN CROSON STUDIES

Anecdotal evidence – oral accounts of the experiences of individuals seeking to establish or operate their businesses – can play two very important roles in the Croson context. One function of such information is to supplement quantitative, statistical data which reveals a disparity between a jurisdiction’s utilization of businesses owned by minorities and women (MBE/WBE) as vendors of goods and services, and the number of such businesses which are available to provide these items. Anecdotal evidence of this type is thus used to support the evidentiary predicate which under Croson must exist as a constitutional basis for race- and gender-conscious remedial programs.

The other role of anecdotal information is to provide a description of various aspects of the market area as a whole; in this capacity, anecdotal evidence can provide the information which can be used by legislators to devise and implement changes in the jurisdiction’s contracting procedures which do not have as their sole purpose enhancing the utilization of MBE and WBE, even though the changes may produce this result.

II. TYPES OF ANECDOTAL EVIDENCE

A. ANECDOTAL EVIDENCE AS SUPPLEMENTARY PROOF OF DISPARITY

As discussed above in the Legal Framework section of this Report, *Croson* holds that “[w]here there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the locality’s prime contractors, an inference of discriminatory exclusion could arise”.²²² The Supreme Court first articulated and refined this concept – that statistics can be used to create

²²² *Croson*, 488 U.S. at 509.

an inference of discrimination – in a handful of employment discrimination cases.²²³ It was in one of these employment discrimination cases, *Teamsters v. United States*, that the Court observed that statistical data creating an “inference” of discrimination can be supported by individual, personal accounts of discrimination, accounts which can “br[ing] the cold numbers convincingly to life”.²²⁴ The *Croson* Court relied on this proposition in observing that “evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proofs, lend support to a local government’s determination that broader remedial relief is justified”.²²⁵ Indeed, it was in part the absence of such “direct evidence of race discrimination” that prompted the Court to strike down the MBE program in *Croson*.²²⁶

Although the lower federal courts interpreting *Croson* have refused to rely entirely on anecdotal accounts as a basis for upholding a race- or gender-conscious remedial program, they have all supported the Ninth Circuit’s position in *Coral Construction* that the “combination of convincing anecdotal and statistical evidence is potent.”²²⁷ Anecdotal accounts from minority and women business owners supplement hard, statistically demonstrated disparities by providing insight into the patterns and practices of discrimination, that is, into the specific vehicles by which discrimination may be carried out. Oral interviews also clearly reveal the effects these discriminatory acts have on individual business owners. When paired with statistical data, this anecdotal information can identify the practices, both routine and *ad hoc*, by which minority and woman-owned businesses are excluded from such areas as financial assistance and obtaining bonding, and the means by which M/WBE owners are prevented from gaining access to trade organizations, to educational and training opportunities, to the social venues where many business deals are formed and consummated, and to actual contracting opportunities.

Croson authorizes anecdotal inquiries along two lines. The first line delves into “official” or formal acts of exclusion which are undertaken by representatives of the local government entity. The purpose of this examination is a determination of whether the entity has committed affirmative acts designed to bar minority and women business owners from opportunities to contract with the jurisdiction.

The second line of inquiry examines not the affirmative acts of civil servants, but instead focuses on the government’s “passive” support of a private system of prime

²²³ See *Croson*, 488 U.S. at 501-02, 509 (citing *Int’l Broth. of Teamsters v. U.S.*, 431 U.S. 324 (1977), *Hazelwood School Dist. v. U.S.*, 433 U.S. 299 (1977), *Bazemore v. Friday*, 478 U.S. 385 (1986), and *Johnson v. Transportation Agency*, 480 U.S. 616 (1987)).

²²⁴ *Id.*

²²⁵ *Croson*, 488 U.S. at 509.

²²⁶ *Id.* at 480.

²²⁷ 941 F.2d at 919. See *Philadelphia*, 6 F.3d at 1003, and *Concrete Works*, 36 F.3d at 1520-21, 1530.

contractors or other entities which in turn use their power and influence to bar minority and women businesses from benefiting from opportunities originating with the government entity. Under *Croson*, “passive” governmental exclusion results when government officials knowingly either use public monies to contract with private sector companies which discriminate against minority and women business owners, or fail to take positive steps to prevent discrimination by contractors who receive public funds.²²⁸

Anecdotal accounts of passive discrimination necessarily delve, to some extent, into the activities of purely private-sector entities. In a recent opinion, the Tenth Circuit Court of Appeals has cautioned that anecdotal accounts of discrimination should be entitled to less evidentiary weight to the extent that the accounts concern private more than government-sponsored activities.²²⁹ Nonetheless, when paired with appropriate statistical data, anecdotal evidence that the entity has engaged in either affirmative or passive forms of discrimination can support the imposition of a race- or gender-conscious remedial program.

B. ANECDOTAL EVIDENCE AS DESCRIPTIONS OF GENERAL MARKET CONDITIONS

Anecdotal evidence that is not sufficiently compelling either alone or in combination with statistical data to support a race or gender conscious program is not without utility in the *Croson* framework. As *Croson* points out, jurisdictions have at their disposal “a whole array of race-neutral devices to increase the accessibility of city contracting opportunities to small entrepreneurs of all races”.²³⁰ Anecdotal accounts from minority and women business owners, as well as those from majority business owners, can paint a finely detailed portrait of the practices and procedures which generally govern the award of public contracts in the relevant market area. These narratives can thus identify specific generic practices which can be implemented, improved, or eliminated in order to increase contracting opportunities for businesses owned by all citizens.

C. METHODOLOGY

This study utilizes the oral history interviews to gather anecdotal testimony. Oral history is defined by the *American Heritage Dictionary* as “historical information obtained in interviews with individuals having firsthand knowledge.” This type of

²²⁸ *Croson*, 488 U.S. at 491-93, 509.

²²⁹ *Concrete Works*, 36 F.3d at 1530 (“while a factfinder should accord less weight to personal accounts of discrimination that reflect isolated incidents, anecdotal evidence of a municipality’s institutional practices carry more weight due to the systemic impact that such institutional practices have on market conditions”).

²³⁰ 488 U.S. at 509.

in-depth interview has been determined by Mason Tillman Associates to be superior to other forms of gathering anecdotal evidence – mail or telephone surveys, or public hearing testimony – because it affords the researcher a greater opportunity to gather not only the effects of discriminatory practices on MBE/WBEs, but also the means by which those practices occur. It also affords the MBE/WBE a protected setting in which its anonymity can be preserved.

By allowing interviewees to describe, in detail and in their own words, the barriers they have experienced in conducting business, information can be collected as to how barriers occur, who creates them, and how they affect the development of MBE/WBE businesses. Thus, the information obtained not only sheds light on an agency's present MBE/WBE program, but offers vital insights for future program needs and race neutral changes.

The interviewees who participated in this study were solicited through a variety of channels, including bidders lists, public meetings, media outreach, and business networking. Once targeted, interviewees were pre-screened to determine whether they fit the appropriate occupational category, operated within the defined market area, and were willing to commit to the interview process.

The telephone interviews lasted an average of one and one-half hours. Interviewers used a standard survey guide designed to cover all aspects of business development from start-up to growth issues, and to cover both public and private sector experiences.

Once completed, the interviews were transcribed and analyzed for patterns and practices of discrimination. This anecdotal report is the result of the analysis of the transcripts.

D. INTERVIEWEE PROFILES

A total of sixty (60) interviews were conducted. Thirty were African American business owners, 6 were Asian Americans, 5 were Hispanic Americans, 3 were Native Americans, 16 were Caucasian (women). The sample included 34 men business owners and 26 women business owners.

Interviewees were selected from Construction Services firms, including Architectural and Engineering and Professional Services firms and those providing commodities.

Of the sixty interviewees, 23 were involved in Construction Services, 10 were design consultants, and 27 were professional services or suppliers.

**Chart 5.1
Oral History
Interview Profiles**

INTERVIEWS ACCOMPLISHED **60**

ETHNICITY

AFRICAN AMERICAN	30
ASIAN	6
CAUCASIAN FEMALE	16
HISPANIC	5
NATIVE AMERICAN	3

GENDER

FEMALE	34
MALE	26

INDUSTRY

CONSTRUCTION	23
DESIGN CONSULTANTS	10
SUPPLIERS	27

III. FINANCIAL BARRIERS

The first set of barriers usually encountered by minority and woman-owned businesses are in the financial arena. As with most new companies, financial assistance is of the essence for MBE/WBEs. And yet, minorities and women are often denied such assistance based on racial and gender prejudice.

Seventy-three percent (73%) of the MBE/WBEs interviewed in this study encountered barriers in attempting to obtain loans or lines of credit. Some of those barriers are outlined below.

Banks and Lending Institutions

The women business owners interviewed in this study encountered formidable difficulty in obtaining loans and credit lines from banks. Repeatedly they were denied on the basis of their sex or because their husband was not involved in their business. The type of capricious behavior exhibited by bankers toward women is illustrated in the following situation which took place at a Small Business Administration meeting:

[T]his one banker stood up and said, 'You know, there is a problem here. What if you pre-certify a woman for a loan and she comes in and we don't give her a loan.' They said, 'Well, you don't have to give her a loan.' So I stood up and said, 'Well, if she is pre-qualified for a loan and she goes into a bank, why wouldn't she get the loan?' The banker said, 'We might not like the way she looks.'

More than one female business owner stated that she had been required to have her husband co-sign on her company loan, although in none of the cases were the husbands involved in the business. One woman, who was putting up a large vehicle as collateral and who had an excellent credit rating was still asked to have her husband co-sign her loan. She refused, and after a long battle with the bank, finally prevailed:

I was putting the [vehicle] up for collateral. They wanted my husband to also sign. I refused to let him sign. He was certainly willing. I just felt it was the principal [of the matter] because I had the credit rating but the bank just did not want to allow it to happen without his signature. I finally won on that factor and since the [vehicle] was up for collateral, that was my argument. I did win on that, but it was a battle – a real battle.

Another female business owner in the trucking industry was also asked to have her husband co-sign a loan, even though he wasn't involved in the business. In the end, she took her business to another bank and paid a higher interest rate to avoid this situation. And her husband was also a business owner who had gone to a bank for a loan, but in that instance she was not asked to co-sign his papers:

They wanted my husband to sign as a guarantor on our account. My husband is not a part of this business at all. I'm a contractor, my husband is an artist . . . [our] two businesses could not be more unrelated. My husband did not feel that it was in his best interest to guarantee our loan. And they had not in the past required him to guarantee loans. [I went to another bank for a loan], and it cost me another two points on interest.

There was another bank . . . who required my husband's signature again on an installment loan to purchase a dump truck. This same bank had loaned my husband money for computers and printers and had not required my signature for his business loans but was requiring his signature for my business loans. When I questioned that, they just told me that that was the way they did business. We did not complete that loan . . . either.

Yet another woman described a situation in which her husband was asked to sign on her loan because he was deemed more credit-worthy. And yet her male colleagues with similar experience have no difficulty in obtaining loans:

When I started [my business] I prepared, of course, a business plan and went to various banks and was consistently turned down. They usually wanted my husband's signature, which I was unwilling to do Now, you know, in 1995, I think there's no such thing as any kind of line of credit without co-signatures, but at that time it was not common . . . [The bank] just said that he would be more credit-worthy than I would be, that [he] was a better bet, whereas I knew male counterparts that could just go out and get a line of credit on a signature with similar background to me, like with a similar degree and experience.

An African American business woman who tried to get credit with several major banks for her business was unable to do so. However, when she went to an African American-owned bank, they gave her the credit she needed. Where the other banks said she didn't have enough collateral, the African American bank offered her the credit line on the basis of her collateral, credit references and having known her for a number of years. She is still in business after fourteen years.

One minority female business owner stated that she turned to the Small Business Administration for a loan after hearing that they had a special program for woman-owned businesses. However, only four loans had been offered in Missouri since the program began, while sixty-three had been made in Alabama since its inception. This woman was unable to procure a loan from the SBA, and was left with questions and frustrations over the low loan rates in Missouri.

It was not only the women in this study, however, who recounted incidents of discrimination in attempting to obtain financial assistance. Minorities repeatedly stated that their access to loans and credit lines was blocked, and that majority colleagues often obtained better assistance. One African American explained that he was told by a banker that he would not be given a loan simply because he was a minority:

[This institution] wouldn't extend us credit, simply because we're a minority-owned business, and the gentleman actually came out on the phone and said, 'No, we will not loan you money, not give you a line of credit simply because you're minority-owned business. We've had too many problems with them.'

A minority businessman stated that a white colleague of his who had filed for bankruptcy in recent years was able to obtain assistance from banks when this gentleman was summarily turned away:

[F]or instance, where there . . . was a Caucasian in the same situation [as me] . . . they would get financing on automobiles or their equipment, whereas I was unable to do so. [These were] people that I've worked with in the field when we were employed by other companies, and they went into business for themselves, and I know one particular individual declared bankruptcy for a large amount of money. [And yet] he's been able to buy vehicles and so forth; he was able to get financing through suppliers before I was. I won't call his name, but I know this is so.

Many minorities find that they are denied financial assistance without adequate explanation of the reason for the denial. One minority business person cited the example of a recent denial from a Missouri city's program set up to assist minorities and women:

[T]hey just decline. They don't really give a definite reason . . . the last one was a program for minorities and women here in [this] area . . . and I received a letter in the mail saying I was declined because I didn't meet their criteria. And that was it. That's all it had.

Other minorities state that they also experience a denial of credit without adequate explanation. In addition to that, they often discover that majority colleagues with similar experience obtain financing. The only conclusions that they can draw are that the standards for MBE/WBEs are not the same as those for white males. One African American man with twelve years in a materials supply field explained:

[Banks] will find a reason that they can't extend the credit to you and the reasons are always kind of a trivial type thing. It's nothing solid to base denying you the credit. [The real reasons are that] they don't want to take the chance on a small minority-owned business. [White-owned businesses], they haven't had these kind of problems. As a matter of fact, some of them tell me that they have a \$25,000 limit credit line that they can use . . . with the same company I have

applied with. And if I'm ever over thirty days late, [this company] wants to tell me that I'm not a good credit risk.

One minority man who has spent thirty-five years in a procurement field stated that he once had a loan officer insinuate that a bribe would get him a loan:

[I]t was difficult, even when we had contracts in hand, in obtaining financing for new equipment from the banks One particular loan officer . . . [asked] my wife and I, 'What's your loyalty to me?' and I said, 'I do not pay monies for any kind of favors or anything under the table, I don't do that, I don't run my business this way.' [W]e got up and he stated, 'Well, don't come back,' and I said, 'No,' and then he followed us all the way to the elevator apologizing, and then when we got home the phone was ringing and he asked us to come back because he thought he was going to be turned in so then we went to another bank on the north side of the city and we were able to get some financing.

The impact of the barriers to financial assistance encountered by minority and women business owners are far-reaching. Not only does lack of working capital affect growth, it also ultimately can threaten a company's existence. One woman in the construction industry explained how lack of financial assistance has affected her:

Quite honestly, [lack of financial assistance] affected it all along because in [this] business you pay your invoices every ten days and get a two percent discount. And that is about \$40,000 a year [but] because I have to wait until my accounts receivables come in [I can't take advantage of it]. It affects your cash flow and your inventory. It keeps you small because you don't have a loan or you don't have the cash to buy in large quantity. You just have to purchase for your customers that you have now. It doesn't give you a chance to grow. It keeps you from being competitive It keeps you down where women are supposed to be according to society.

Late Payments by Agencies and Primes Contractors

In addition to the difficulties M/WBEs encounter when attempting to obtain loans and credit lines, they also experience a high incidence of late payment of their invoices. Fifty-three percent (53%) of the MBE/WBEs in this study reported experiencing late payments from either private or public agencies.

Because minorities and women generally play a subcontractor role, they are often reliant on prime contractors for their payment. And in most agencies and private corporations, there is little monitoring of the timely payment from prime contractors

to subcontractors. The stories of late payment, and even non-payment, to MBE/WBEs abound.

One woman stated that late payment is so extreme in some cases that it appears to be harassment:

I believe with all of my heart that there are prime contractors out there that prey on small businesses particularly on minority and woman-owned business knowing full well that they don't have the resources to hire an attorney to collect their payments. They do lots and lots of things not the least of which is withhold your payment until you go broke and then say that you have defaulted on the contract and keep the money.

One female business owner who works in the construction industry stated that in both the public and private sectors she has experienced extremely late payment. In some cases she has been forced to involve attorneys:

[O]n a City project . . . I've had to hire an attorney. I've got about maybe \$6,000 right now in legal fees on trying to collect this money And the electrical contractor that we tried to help out because he was working on the project and he got into an argument with his people that were working for him and everyone quit on him and walked off the project He is a wealthy man. He's been a very successful, wealthy electrical contractor in this town. I would have never in my wildest dreams thought that this guy would try to stiff me for this money, okay? And now I've had to drag lawyers into it. I've had to have the City dragged into it. I've called the City Council on it and no one is helping me get this money. And I'm going to end up having to take this guy to court to get my money. And, you know there's laws that say you can't lien a government facility and that ridiculous. You know, why shouldn't I get paid? [Then] we recently were doing some work for [a large local corporation] and the project manager just decided he didn't want to pay us. He held our money for seven months: seven hundred thousand dollars.

Another minority business person described a situation with a large national corporation in which it took him six months to collect ten thousand dollars. If he had not had a positive relationship with his own vendor, the delay could have put him out of business:

[This corporation] are the worst paying people in the country. And what they do is if you misspell a word, they'll kick your invoice back to you and then you have thirty days to get it back in to them. So

you've already got it in for thirty days and it comes back to you, and they won't even look at it for another thirty days. It took us six months to get about \$10,000 . . . Now if that was all I was depending on or – the thing is I had an arrangement with my vendor. And I told him I would pay him as soon as [the corporation] paid me. So I kept informing him of what we were receiving and the information that we got from them . . . But if it had not been the relationship between me and the vendor, we would have been out of business.

Other MBE/WBEs recounted stories of drastically late payments. A minority contractor in the construction field stated that he had waited as long as six months for payment from a public agency in Kansas City. An African American man in a Professional Services field has waited in excess of one year for payment from a national corporation, and as long as six months from a Federal agency. Another African American man who provides janitorial services stated that he has waited 106 and 109 days for payment.

One woman who has worked in a communications field for twenty years and holds a graduate degree stated that, in some cases, late payment appears to be capricious to the point of constituting harassment. She recounted an ongoing situation with one firm:

[I]n fact they haven't paid our last invoice and they held invoices. They were late in paying. They just seemed to do this at whim. They would decide to pay or not pay, it was an obvious intimidation and harassment technique. And they still haven't paid us the final invoice, and I haven't gotten any indication that they plan to do that, even though they authorized the work and asked us to do the work and we fulfilled the work for them.

The MBE/WBEs in these interviews repeatedly stressed the damage late payment causes to their other business relationships. One woman with over twenty years in the construction field explained:

It affects [our business] terribly. Cash flow is – you know, when we can't get money in the door we can't pay our supplier which makes us look bad to them . . . last year at one point we had over \$500,000 on the books and couldn't pay our suppliers.

Another MBE/WBE stated the effects of late payment this way:

[I]t's obviously a problem for a small business when you have authorized other people and other subcontractors to do work for you and they've all invoiced you and then the agency doesn't pay you, and

then there you are stuck with all these bills [for which people] need their check . . . Creates an undo amount of stress and it creates ill will with people that have had to wait sixty or ninety days to be paid by me because I'm waiting to be paid by them.

A female general contractor who has experienced late payment from a Missouri municipality stated there is a bitter irony when public agencies make late payments that jeopardize the ability of MBE/WBE companies to pay other bills:

We have no ability to grow if we can't get paid on a timely basis. And it's so ironic that [my city] absolutely demands that my City earnings tax be current, that my City occupational license be current, that all of my withholding taxes and my union benefits be current, before they issue a final check or before they will allow us on a contract as either a sub or a prime, but they are the very ones who are delinquent in payment.

One Hispanic contractor with seventeen years in his field also stated that [his city] is often delinquent in payment. And yet, he states, there are other public agencies that try to extend their assistance to MBE/WBEs all the way through the payment process:

But we're still waiting for a check (from our city) now and it's been over a month, so it's still out there. There are some agencies that will work with us and knowing that because we're disadvantaged, that we've got a good company, they want to work with us. They'll work with us, they'll help us meet our needs, so that we can give them 110 percent of our company's services. But there are some that don't give a damn whether you're there or not because they miss their 'old boy' who's been here from year to year, from day to day. But when a new contract comes out, they don't want to see us get it.

Suppliers, Bonding and Insurance

Barriers encountered by M/WBEs in the financial arena are not confined to lending institutions and late payment. Difficulties are also experienced when attempting to obtain financial assistance from peripheral agencies such as suppliers, bonding companies and insurance agencies.

Many MBE/WBEs are unable to obtain lines of credit from suppliers in their industry. This means that, once again, they are pressured to operate solely on their accounts receivables. And when late payment occurs, cash flow becomes a problem.

One African American business woman who supplies materials in a technical industry explained that one supplier refused to offer her credit until she asked her client, a major corporation, to intercede on her behalf and eventually help her obtain the line of credit. The root of the problem was that the supplier was making assumptions about her business based on prejudice, not fact:

[T]he potential account that we were applying for sometimes would tell us that they were assured that we wouldn't qualify because we didn't meet their profiles. It was assumed we were working out of our home and didn't have credit and wouldn't have the proper facilities to even qualify for the distributorship or the credit wherewithal to meet their standards. [They didn't] even look at any of our P[rofit] and L[oss] and balance sheet or anything. It was just an assumption that we wouldn't qualify. They had been referred to us by a client, a major corporation, that wanted us to participate in their bidding process and that also required applying for distributorship of certain products that they wanted us to bid on. And [this supplier] just assumed that we didn't meet their profile. After I was insulted and let them know, I went back to my client [and let them know] that this was happening and they interceded on my behalf.

One woman with seventeen years in a procurement capacity stated that the inability to land credit lines with suppliers greatly slowed the growth of her business:

It took me quite a while not to have to pre-pay for it all. Of course, that eventually changed. There were a few companies that would give [me] net thirty [days to pay] . . . It made it slower progress. You didn't go out and look for a \$10,000 order because then you'd have to have that cash flow. So, it slowed things down.

One Asian business owner with over ten years in the construction field stated that experience has indicated to him that suppliers seem to think twice about extending credit to minorities:

[I]f you have money, cash money, you can get [an order] from anywhere. But sometimes to get a line of credit with some of those [suppliers], since you're a minority, sometimes I think they think twice [about] what they do with you.

A female business owner stated that she has even encountered situations where suppliers will give her a higher price for the same product than they will her majority competitors. In the case she describes below, she lost the contract because of this:

This occurred in situations where they knew that I was a minority business vying for a particular contract, and in an effort to protect the majority firm that already had the business, brought this special pricing [to me]. And the product manufacturer protected the majority firm that already had the business, rather than give us competitive pricing to bid against them. [O]n that one [I lost] almost \$1 million in one product a year, and this had the potential for multi-year contracts. And again, I wasn't asking for preferential pricing, but just to be on the same level playing field.

One African American engineer who has encountered difficulties with many aspects of financing, described the "spiraling impact you have when you have lack of access to credit:"

[B]y being undercapitalized, a number of things begin to happen. If you go into business and you're not able to obtain a sufficient amount of capital you will have trouble making your payments, and based on that . . . we were turned down on some lease agreements for getting computer equipment. [T]he equipment that we have now was obtained only because a firm, another African-American owned firm that manufactures and supplies computers, the president of that firm was a good friend of mine, and although he attempted to obtain leases for us for that equipment he was not successful. So, he just financed it himself. But that's more of a function of our financial situation going downward based on lack of access to capital as opposed to an issue of race, but the whole thing of course is related . . .

In addition to difficulties with suppliers, MBE/WBEs encounter barriers with bonding and other insurance coverage. One Caucasian woman in the construction field stated that her difficulties getting bonding were closely tied to those she had obtaining financing from the bank, because the bonding company would not bond her until she had a line of credit. And in her case, she could not get a line of credit until her husband, who was not involved in the business, co-signed her loan.

One minority contractor stated that, after his father retired and left the company, he went from the ability to bond ten million dollar jobs down to nothing. The insurance agent working for him, who had known the family for many years, was honest enough to explain what was going on. The problem was that the insurance company did not want to bond a minority businessman just starting out:

I talked to the insurance people and the man just told me, 'You will never get a letter denying you bonding because they always send this out and they won't tell you why they won't bond you.' He just came out and told me, 'Number one, you're starting out fresh, and number

two, you're a minority firm and they don't like to bond minority firms starting out.' And he's been with us a long time and he was just basically being honest. But we went from a point where we could bond anything up to about \$10 million to zero bonding in less than a month. And that was strictly with dad's retirement.

One minority electrical contractor stated that he was unable to procure bonding because he was unable to obtain a bank loan. This, in turn, has prevented him from taking on jobs that required bonding:

I haven't been able to get secure bonding at all for the same reason: [I can't get] financial aid. What I mean by financial aid is being able to borrow money Now the Small Business Administration claimed that they give bonding, but I've looked into the process and how long it takes . . . by the time you bid a job and you apply for SBA bonding the bidding process is over. If you can't come up with a bid bond and show that you can come up with a performance bond at the time of the bid, you can't enter the process.

An African American in the construction field echoed this same problem: "I haven't been able to receive any capitalizations to secure any type of bonding so . . . I have to target those kinds of projects [with no bonding requirements]. An Asian contractor in the environmental clean-up field stated: "Sometimes we have to let a lot of big jobs go because [our] bonding capability is not that much to bond the [big] jobs."

One female business owner stated that she had been unable to obtain bonding because of retaliatory actions on the part of some of the general contractors in her field. Because she would not allow her company to be used as a front when asked to do so by these general contractors, they retaliated by telling her she would not get the bonds she needed for certain jobs. And their threats held true:

We had problems obtaining bonding Some of the general contractors said I'll never do a job because they will make sure that I don't get the bond[ing] My theory is if the big general contractors don't want you to work they pick up the phone and tell the bank not to give you a loan, and tell the bonders not to give you a bond . . . [but] I won't front. I started this company . . . out of the sweat of my brow and me and my kids worked awfully hard, and we built a company that supported us and I'm proud of this company . . . If my company is going to do a job, let me do it.

Finally, some MBE/WBEs stated that they pay higher bonding rates than do non-MBE/WBE companies:

Every public project here in [my city] . . . has no less than a performance and payment bond. The scope of work that we perform . . . further requires a maintenance bond of up to three years, depending on the owner. The three-year maintenance bonds are very difficult to obtain through Small Business Administration and some independent markets. We also understand that we pay a very high premium for our bond. We pay 3.1 percent as opposed to an older, more established business who may pay half a percent.

An African American contractor who had to pay higher bonding rates because of the relatively young age of his company stated that those higher rates costs prevented him from bidding on many jobs:

[P]robably anyone can get the bonding. [Y]ou can get it but you're gonna run 3 percent, [although] a normal contractor's [rate] within the State of Missouri is one percent or less. So you have a disadvantage of two percent when you go bid prime against another contractor And that's based upon the value of your company. As the company grows and you get some net worth, then you get better bonding so somebody that's already established, yeah, they're gonna have a better advantage. Somebody that's just starting out, you're gonna have to, you know, unless you have beaucoup amount of money or assets behind you, you're going to have to pay the higher bonding rate It eliminated me from bidding a lot of projects.

Obtaining reasonable rates for insurance is also difficult for MBE/WBEs. Once again, it is a vicious circle that prevents minorities and women from either obtaining insurance or procuring reasonable rates for that insurance. A minority woman who provides industrial supplies stated:

I had problems getting the insurance for two reasons. They said [my] company's experience was not adequate or up to the [insurance company's] standard . . . where we had applied. And they also said our gross sales were not large enough. But after five months we did get the insurance and it was a performance bond, we had to put up our own personal CDs, and pay the premium each month until the contract was over. [I]t was a three year contract, so we lost money by putting the CDs up, because we never got the interest.

A minority businessman in the construction field explained: "Insurance is very costly And, of course, being a new company your rates will be much higher than a company that's already in existence."

IV. BARRIERS WITHIN THE PROFESSIONAL NETWORK

As well as the barriers encountered by minorities and women within financial institutions, there are also those presented by their colleagues and co-workers, those people with whom they undertake to work. Many of the barriers posed in this arena are the result of the belief that one can be pre-judged solely based on their race or gender. The treatment of MBE/WBEs that these attitudes engender will be examined below.

Racism and Sexism

Minorities and women continually battle stereotypes about their race and gender, stereotypes that lead those around them to believe they are not capable of performing work on an equal level with majority peers. An African American business woman experienced this quite clearly when, after not always making it known that she was her company's owner, she made the ethnicity of the company clear to potential clients:

[I'm] a member of the local supplier council [which] urges you to make your ethnicity as a minority supplier and your membership in the council known [p]articularly to government prime contractors, who have goals to meet as a part of their contract with the government. And I've found that in those situations I've gotten comments like, 'I'll call you when I think there's something you can handle.' My reply always is, 'Without seeing a profile of my company, how do you know what I can handle?' Really, with one corporation they said, 'It's all about what I think you can handle.' [And] they hadn't asked me anything. They didn't ask me for any information. They didn't ask me to follow up with anything or to explain who we are, what we are, what we do, and how we can help them. So, you know, it's all perception and to me that was a closed door and a sign of no commitment even to equal access. Because that's all I want. I don't want any preferential treatment. Just let me in there. I'll do the rest.

One Native American business owner who has worked in his field over ten years stated that other businesses are often afraid to hire his company because it is minority-owned, even though he has good references and a positive work history:

[A] lot of times businesses that have not seen our work, even though we can present pretty good credentials and quite a bit of references . . . are afraid to use us as a minority.

A minority businessman stated that one public agency official explained to him that the public perception is that African American companies cannot perform. And, as this man states, African American firms are caught in a vicious circle because they cannot disprove this stereotype until given the chance to perform a job:

An executive director of a public agency said to me a number of years ago that the perception is that Black firms don't really know what they are doing and you have to go behind them . . . I've heard this in the St. Louis area and the Columbus area, so I think it's a very real perception and it's one that basically is only disproved by being allowed to work on the job and demonstrate your competency.

An African American businessman with an extensive professional history in his field states that he continually fights the perception that African American firms cannot perform, despite his company's concrete record of successful and sophisticated performance:

[B]y virtue of the fact that this an African American-owned business, we have to fight diligently the perception of lack of ability to address major business problems. [W]hen I walk into an office of a major corporation, the first problem that I have to deal with is 'Oh, he's black so he's limited.' But we don't happen to be limited. We can do anything in [this industry] and we can prove and justify that and even get testimonials to that effect on probably one of the most sophisticated and complicated projects [in this field] in this State that we have done. But you still have to fight the perception and that's both in private and public industry.

One Hispanic business owner who supplies construction materials stated that she must pay higher insurance rates because it is feared that, because she is Mexican, she will leave the country and return there. This is based not on her work ethic or performance, but the mere fact that she is Mexican:

[My insurance] costs an average of \$5,000 to \$8,000 per year, well this year it cost me . . . \$11,800, which has to come out of the profits. [It's] just for the security you will not run away. They say, 'You're gonna go back to Mexico, we're gonna call . . . and nobody's gonna answer the telephone and the company's gonna go broke,' and things like that.

A minority engineer who spent several years working for a large majority firm explained that, as an employee with this company, he heard firsthand that the capabilities of minority firms were distrusted. And then, he experienced it when owning his own business:

[B]eing a minority-owned firm, like we are . . . you can summarize our difficulties by saying that those who purchase our kind of services don't have a very high expectation of minority professional design companies. Therefore, we're not taken as a serious provider . . . there's a general feeling out there that . . . we're so stupid that they wave the possibility of a \$10,000 contract [and] we would just accept it. [You] are a minority-owned company and here's \$10,000 worth of work and aren't you lucky to get it from us.

[T]his is based upon experience that I had prior to starting my own company, working for a white construction concern. They are very conservative in nature. They are sympathetic to the plight of majority contractors who must comply with minority goals. They, too, are bothered by the program . . . they mistrust the abilities of minority firms; therefore, they really would rather not have to deal with this kind of thing.

The prejudicial sentiments of some individuals evidence themselves not in overt judgments of an MBE/WBE's abilities, but in their treatment of minorities and women. One African American supplier of industrial materials stated that a potential buyer once referred to him as "nigger." Why the man did so, he could not fathom, except to drive away his attempt to sell this man supplies, which the comment did:

I had one particular contract, I never forgot this . . . I was trying to sell [a white male] some merchandise and we were standing around talking outside one of the job sites, and he was telling me everything that he liked and that he wanted to [buy], and he said, 'Don't feel bad when you come in to deliver [products] for me, don't feel bad if once in a while I call you nigger.' I said, 'Well, I don't have a problem with that if you don't feel bad when I call you a honkey.' I don't know why he was saying it, it just came out of the blue. That's what shocked me . . . I never did any business with him [any]more. That's the reason why he probably wanted to do that, but again, I'm not sure . . .

A Native American businessman explained that at times on job sites he has been ridiculed because of his ethnic identity, and sometimes in a vaguely threatening manner. He describes one incident below:

[T]hey were always calling you chief, you know, they were acting like they were going . . . to chop me or they were going to chop me off the job.

Due to being stereotyped and judged before they have had a chance to show that they were qualified to perform and complete work, many minority and women business owners do not make the MBE/WBE status of their companies known. A very high number of interviewees in this study reported engaging in this practice to allow them to be evaluated on their merits rather than pre-judgments.

One African American supplier stated, "That's how you get the majority of your business I have cards made up that [don't] even have my name on there."

One female business owner who has refused to hide the WBE status of her business stated that the representative of a large company told her to her face that she should do so:

[A representative of] one of the major government agencies came into my office and literally stuck a male employee in my desk and said to me, 'If he sits here you get more work.'

One minority supplier of industrial materials explained that he encounters extreme distrust of minorities, which has caused him to hid the minority status of his company:

Certain companies, because we are minority owned, will not do business with us. And that's mainly in the private sector. [T]hey've had bad experiences with minority-owned companies, so they say. And so what I've done is I've got two business cards – one says President and one says Sales Representative. If I go in and start talking to somebody or know a little bit about them, I will give them the Sales Representative card. But if they're looking for minority participation, I'm more than happy to throw out my President cards I run the streets from sun-up . . . until it gets dark in the evening talking to different people, trying to get business from them. And they promise me the world, 'Yes, we want to do business with you,' and most of it never materializes. There is such a stigma out here about minority-owned businesses, that we can't perform, we don't perform, we don't have the backing, that we can't do what we say we're going to do, that – or our prices are too high, so rather than take the risk of working with us, they'd much rather not.

I've made several friends out here in larger companies and I have been told this and also you can tell when you go in and talk to

someone how they feel about whether they want to do business with you or not and whether they're genuine

One minority consultant in a Professional Services category stated that, although his teams are often completely integrated, in order to obtain work his salespeople must be white:

[M]y team of people that I call in to subcontract with me on this project are completely integrated . . . those who I knew I needed to front me, and I mean literally to have their face out there making some of the key contacts, they're white.

An African American business woman with five years in her field stated that she has learned through experience that she needs a white face in the room with her when transacting certain business:

[M]y broker's white. So is my CPA. My business manager who I contract with is a CPA for a major accounting firm, he's white. And I do that because, for example, I went to the bank recently to get a line of credit – I made sure he was there. I made sure that he was the person that set up the initial contact. Because . . . sometimes it seems like you have to have a white face out there in the front to transact business for you. It's unfortunate but it's still very real. I've noticed that when my CPA is in the meeting with me, if I'm talking with other . . . Caucasians . . . I notice the body language and the conversation does seem to change when he's there and they seem to have at least, how can I say this, have a certain level of comfort in talking more with him.

One minority business person stated that he and his partner, who is African American, often let their white office manager make initial contacts with potential clients. They have noticed, through experience, that this causes less resistance to doing business with them:

[W]hen we got started . . . our office manager was a white female. And she would establish maybe the initial contacts that we had. So, you know, just her interacting with people I think probably gave us less resistance than if either myself or my partner, who is also an African American, had done it. So that might have kind of eased us into getting contracts and maintaining stability with them. And now we've had them for so many years, that's not a problem.

Women do not escape prejudice either. Seventy-three percent (73%) of the women interviewed in this study had experienced discrimination based on gender. One

Caucasian woman who supplies materials for a particular industry stated that, after becoming certified with a Federal agency, she called a buyer to try to sell him some items. His response was: "Nobody is going to tell me that I have to buy from a woman."

One woman who works in electrical contracting described a prebid meeting at which the male official tried to tell her she couldn't walk through the building with the rest of the men because she might fall down. While the statement was ridiculous in itself because she could walk just as easily as the men, if she hadn't done the "walk-through," she would not have been able to bid the job:

I attend prebid meetings with some of these huge corporations and I have had the male people actually tell me that I could not go through the plant because I might fall down and get hurt, okay. And now, I am an invited bidder, okay, the president of the organization and there to go through the plant just like the other ten guys that are there. But I had better not because I might fall down and trip and we just wouldn't want that to happen. Now come on.

Finally, bias against women taking part in business still affects the ability of many women business owners to win contracts, even when they are qualified and have performed well. One woman who made a client presentation was told by an insider at the company: "You did a heck of a job on that interview, but they just aren't ready to hire a woman."

Higher Standards of Review

Fifty percent (50%) of the MBE/WBEs in this study reported experiencing a higher set of review standards than their majority peers. Because of the stereotypical beliefs of many business people who work with MBE/WBEs there is often a higher standard of review applied to the work performance of MBE/WBEs. From the beginning of a job, their abilities are questioned and their performance is put under much higher scrutiny than is that of majority colleagues.

One minority businessman stated that his firm was held to higher standards than a majority firm that was working alongside his. After incurring the additional expense of being held to these higher standards, he filed a complaint with City officials and received some compensation:

[I]t was one of the larger projects in town . . . and I just looked as far as the City inspectors were concerned as to what was going on. We were doing basically the same work but I had a heck of a time getting mine approved and out, and I was really performing quite a bit better than what the other company was, but yet, still, we got all the trouble

out of the City inspectors as far as keeping street cleans. [The majority firm and I] were both using the same route, but they kept telling me I had to clean the street, so I said, 'I don't mind cleaning them but the expense has to be shared between the two companies, because we're both using the street,' and they said 'You get out on the street first.' I ended up filing a complaint with [a City official] and he kind of got it straightened out It's just little petty stuff, but it means a lot when you get into more expense, it really cuts your profit margin down on the job if you have to constantly keep doing other people's work

A female business woman stated that her company is often given false deadlines, as if she and her team are incapable of bringing a project in on time. Additionally, she has seen majority firms turn in worse performances than minority companies, yet the minorities pay a higher price for small mistakes:

They obviously need something from us faster than they need it from other people People give us phony deadlines. In other words, 'We need it by Thursday.' We bring it in on Thursday, they're not finished with what they are doing and there are other people who are bringing their work in later, but we're not called and told, 'You can have a couple of more days to work on the drawings.' Those types of things. The standard of performance then is graded differently. We get an opportunity to make one mistake, and then after that we're not carrying our load on the job. I've been on projects that have been major projects, fast-track, and everyone is under the gun, and people are human, they make mistakes all over the place. However, the minority firms are the ones that are put under the spotlight.

An African American man in a construction-related field stated that from the moment he steps on a site he can be questioned and scrutinized. In his opinion this is a form of intimidation:

First thing, they question you when you get on the job: have you done this before, like you don't know what you're doing, like I don't know how to lay out the jobs, like I don't know how to order material, like I don't know what the critical path method is, even though I give them past references of jobs all the time. It's just a form of harassment, just playing mind games so they can keep you unsettled and uneasy. They hope you make mistakes and they can get rid of you. They try to give me the impression that I don't know. The main purpose is to try to keep you unsettled and disturbed. Perhaps hoping they can provoke you into mistakes or something.

Another MBE/WBE business owner stated that she feels higher standards of review are often imposed on MBE/WBEs because majority companies don't want them on the job:

I think that people are looking for reasons not to use WBE and DBEs and if we make a mistake, it is a reason never to use this company again, and to complain to other male counterparts, the good old boys, about how DBEs cannot perform the work And just by those insinuations . . . the pressure is on [MBE/WBEs] to outperform even the non-minority counterparts We're not allowed to make mistakes. Or certainly we're expected to have a very competitive price, the ability to perform or out-perform the good old boys who have been in the system longer, and also have the ability to [turn up] construction finance while we wait for our money.

One African American supplier who has been in his field almost twenty years stated his sentiments on this issue succinctly: "[We should be] a color-blind society instead of focusing on color . . . because white Americans can mess up too. It isn't like they're perfect."

Harassment and Retaliation

In addition to the subtle racist or sexist treatment that many MBE/WBEs encounter, outright harassment and intimidation can take place in work situations. Not only does this raise the stress level for minorities and women, it often makes it more difficult for them to do their work and even to get paid.

One Hispanic contractor described a construction job on which he worked. To successfully complete this job he had to put up with a great deal of racial harassment:

At the beginning [of the job] everything was fine, then they started to rush us, and they . . . learned how to do [our] work within themselves, [so] they wanted to go outside and hire a foreman. They started taking on our own work and then charging it back to us, telling us if we don't do this or do that they would call our bonding company We didn't have to go to court [and] we did complete our contract, our bond was released, because I sat there and took all the harassment, all the name calling, all the Hispanic, spic, nigger, this and that. We finished our job. But it wasn't the way I would want to work for anybody in this country. I don't feel that any individual should have to go through stuff like that.

One minority contractor in the excavation and demolition field stated that he had been harassed on job sites to the degree that the prime contractors attempted to force him to stay on his machine at all times and not move freely through the job site:

I was the minority on that project. They didn't even want me to get off the machine to even go to the bathroom or eat lunch or anything [B]ut they were pretty down on me because they said they could only work me for just a small amount of time and I would have to shut down because the State hadn't surveyed more area for me to work in. I said I could take care of that, I would just basically call up the state and have the surveyors come out here. Well, you know, I did that and the surveyors came out and they got real unhappy because I created myself more work. I wasn't doing anything harmful to their business; it was giving me work that I was already contracted to do but after that they just kept harassing me on that project and that was the last job that we did for them. They were talking about they were going to make me work weekends or later hours and things like that, which really wasn't right because we work the same hours as they did and they had me tracking my machine all over this project. I think they were just trying to get me mad so I'd leave.

One minority contractor stated that he experiences harassment on job sites. It often takes the form of being forced to do additional work without pay. In order to protect himself from these threats, he must threaten to bring in his attorney and be prepared to incur the expense of going to court:

[A]s far as [harassment] on the job, they try to get you to do change-order work and I don't do change-orders unless I get something signed in advance. I've had them tell me on occasion, 'Look, if you don't do this then we're going to run you off the job,' and I have a clause in my contract that they have to abide by, so I tell them, 'Well, you do it as it's called for in the contract or we'll fight about it in court from there.' If they generally know you won't be bulldozed, they kind of leave you alone.

An African American contractor who works in the construction field stated that, on some job sites, harassment escalates to being more than verbal. As the minority quoted above stated, this man believes harassment is designed to get minorities and women to voluntarily leave jobs:

[A]lmost all the union workers in this area are white. The first thing, they sort of get angry about you being non-union, you're a rat, this and that . . . but you know, I very seldom hear of any white non-union contractors called that. [What happens is] some guy would try to

provoke you into getting into a fight with him or something. You may be working in the same area and he may push your stuff to the side or just try to come in and try to take over the work area you're working in. Just a form of harassment. If can get you to react violently or to react any way so you can become violent on the job you will get kicked off the job. That's one way to get rid of you.

One minority who works for the Police Department in a Missouri city stated that he had even been harassed by the police officers. Finally he was ticketed by one officer while his truck was parked legally in a loading zone, although a white contractor's truck was parked next to his and not ticketed. He protested the ticket, took it to court and had it thrown out. The ruling involved an "abuse of power" on the policeman's part.

Women also do not escape harassment in attempting to conduct business. Often the harassment takes on a sexual nature with women. One woman recounts how she was sexually harassed by an inspector for a local city:

I filed a harassment charge against one of the inspectors for [a Missouri city]. We had a meeting with his supervisors, and he was taken off our projects and recommended to go to counseling [although] I don't know if he ever did or not. [He] was forbidden to call or contact us in any way, shape or form He was wanting things in a sexual nature. Then, if I turned him down or was curt with him, he would go out in the field and, if in the morning he had gone out there and told the guys it was okay for them to put a trench 24" deep, he'd come out here and we would have our little words. He would then go out and tell my guys that the trench had to be 36" deep.

One woman who worked on a job site had to tolerate a Playboy calendar in the project office. When she took the calendar down, it was immediately replaced by the men on the team. After repeated attempts to get rid of the calendar, she went out and bought a Playgirl calendar and put it up. However, she would continually find it taken down. When she insisted on putting it back up to prove her point, the men on the project made paper shorts to put over the genitals of the male models.

Minorities and women, given this degree of harassment in the work place, are often afraid to file complaints because of possible retaliation. In fact, those who do complain often experience such acts of retaliation.

One female contractor stated it this way:

[You can't complain] because it just causes you more problems. It is easier to laugh it off than it is to [complain]. If you get blackballed because you are complaining about not being paid, can you imagine what would happen if you complained about something like [harassment]?

It is the loss of work that minorities and women experience when they complain about mistreatment that motivates them to keep quiet. Regrettably, this is often learned through experience. One supplier stated:

We complained and made [the situation] worse. So basically what we did was backed off. We totally backed off, okay, and there wasn't anything we could do. The more we screamed and shouted, three of my biggest competitors ended up getting all those jobs that were mine, that they probably never bid and someone just handed to them after we worked our butts off to get them, okay?

One minority supplier stated that, even after writing a letter of complaint that a white superior suggested he write, he was refused work on the basis of having written that letter:

I attended a trade fair and I had been trying to sell [to a certain company] because they're a chemical manufacturer which means they buy tremendous amounts of [the products I sell]. And they would also like to meet minority participation . . . goals. I met with the people at a trade fair and they said, 'Yes, we're interested in doing work with you, like to do work with you, call this lady.' So I called her and she never returns my call. Then I called back to the gentleman that I talked to and he says, 'If she doesn't respond, you write to this guy here.' So I wrote to that guy and explained to him what happened. Next thing I know, my partner makes contact with the lady and she shows him the letter that I wrote to him. And since then we don't get any work from them. So I'm damned if I do and damned if I don't.

A Closed Contracting Network

After they have formed their businesses and begun the campaign to obtain contracts, many minorities and women find that they are not readily accepted into the professional network in their field. Many doors are closed to them that are open to their white male colleagues. Seventy-three percent (73%) of the MBE/WBEs in

these interviews stated that they had experienced barriers in attempting to break into the contracting network in their field.

One Caucasian woman stated that, although she is a member of a local professional organization, she cannot get invited to meetings or social functions. She is completely excluded:

I am a member of [a particular association] and yet I have never been invited to any of their meetings or been privy to any of their discussions I can't get invited to the social functions, their dinners. I get things in the mail about classes and things, but as far as being invited to any meetings, I'm never invited.

The inability to network on a social level with majority colleagues often cuts deep into a minority's ability to find out about and win important contracts. One Hispanic engineer with over twenty-five years in his field stated that he cannot get majority business people to accept social invitations from him, not even for lunch:

[Y]ou have to network with [potential clients]. You know, they won't go out to lunch with me, but they will go out to lunch with the bigger, major firms. They won't accept invitations from us to say, maybe attend a ball game or whatever, those agencies that don't prohibit that kind of thing. That's one of the things [we experience].

Social events between majority and minority business people are quite rare, according to the interviewees in this study. A minority industrial supplier stated that, because of a dynamic new president of a local minority association, he has recently attended his first golf tournament that included both large corporate majority business people and minority individuals:

I mean for awhile there we had no one to go to . . . no advocate from the large corporations to small businesses, as minority-owned businesses. [This president] is just dynamic and he's brought in the corporations and because of him we have gotten several contracts . . . I never would have gotten [a large corporate client] if it hadn't been for his unselfish acts out there of trying to bring Corporate America to work alongside the minority businesses. And he's done it not just for me but for several people. In fact we just had our first golf tournament a couple of weeks ago, fantastic turnout, Corporate America and minority business playing golf together.

In addition to the barriers minorities and women face in attempting to network either socially or professionally with majority clients, they also encounter difficulties in breaking through established working relationships. Getting a new client to try you

out can be a challenge, if not impossible. One woman attributes this to the ease and comfort for most contractors of working with an already known quantity:

It's so much easier for a purchasing agent to just reorder from the past supplier and . . . I just came into [the Missouri city in which I now live] about seven years ago. I do not know a lot of people in this area. I do think that it is a networking problem in which they are just reordering, not thinking that there are other suppliers that can give them a better delivery, a better price and just overlooking those benefits that we offer to different companies.

Others stated that it is friendships or familial connections firmly in place that prevent them from obtaining new business:

The building contractors locally won't even give me an opportunity to bid on the new buildings, cleaning them for presentation to the owners and stuff like that . . . no, I don't get any of those at all. I mean, they've just got their people and it's normally somebody related to them that works for the company . . . I've even gone to some of the local larger contractors and asked them if I could be given an opportunity to bid on the building for presentation [and] they would tell me that it's already been let, you know. I don't know if they [were] telling the truth or not, but you would always find one of them that was a relation out doing the work.

The fact that majority business people have an easier time in networking and selling their services to new clients is illustrated by the following anecdote, in which a minority businessman and his majority partner ended their business association. Although the minority kept the business intact, the majority partner made \$100,000 in the same time that the minority only made \$15,000:

[My former partner] has done work all over, because when you get leads, inside leads, many times there is work that is not publicized that is being done. There is a lot of work that doesn't reach the public that's being done. If you don't know anybody in the network, you don't get to do it.

Two women in Professional Services fields stated that they continually experience difficulty in being accepted in their field. The first stated: "When you go into meetings and if you sit at the table with other corporations, there is a sense of, 'Well, what are you doing here?' You have to a part of the insider's loop before you're accepted." The second woman stated that, without WBE goals, she never would have been considered for certain contracts:

I never would have even be considered; they would have never found me if they hadn't been required to do it. But I think for the most part, having worked in the Fortune 500 world for thirteen years, I just know that being a woman in a mostly male-dominated Fortune 500 company is sometimes awkward and difficult. And all the things that you read in Fortune Magazine are absolutely true about how you can be the only woman in the room frequently [and] you can come up with an idea that everybody passes over, and then one of the other guys in the room states the same idea and everybody thinks it's a great idea.

One minority business person stated that, in his experience, the majority companies in his field that have controlled the industry for many years will shop his bids to the majority companies that they want to use. Therefore, despite his attempt to win contracts through low bids, he still finds that the "good old boy's network" finds ways to circumvent using him:

[T]hey have for years – and especially since the [M/WBE] percentages have been put in – they will take your [bid] number and then if you don't get down to the price they want you to get to, they give it to someone else anyway. [T]hese people that work for them all the time, they always seem to be a couple thousand dollars under your price. [T]hat's what we call 'the good old boy's situation. They just . . . shop your price then give it to [their friends].

One African American supplier stated that the only way he sees to get around this problem is to overcome resistance with more hard work. So, he spends extra time networking and attempting to break down the resistance toward him:

[I]t's still very, very closed, and you have to give that extra effort to go out and mingle and force people to work with you or just talk with you. It's extremely closed, but the only way that we're gonna open it is to be out there, to constantly be out there . . . you know, that's just the way it is.

Discrimination Within Unions

Unions are an integral aspect of certain professional fields and, therefore, a successful working relationship with union members is vital. However, several minorities and women in this study stated that their relationships with unions had been compromised by prejudicial treatment.

The majority of disturbances uncovered in this study involved women. Union members repeatedly refused women entrance to the ranks, and tried to prevent women business owners from remaining within the ranks.

One woman stated that the union had tried to force her to become a front company. When she refused to do so, wanting to operate the business that she had built from scratch herself, she was harassed and her livelihood threatened:

My union wanted me to front my company. I refused to do so. They hurt me by not giving me labor, sending me out to other companies to use their labor. It devastated, totally devastated my company. They found another minority that would front for them and they are very happy and I'm very happy being non-union as long as I'm left alone. My company almost went bankrupt My home was totally destroyed. I had to send my mother out of state and my children out of state, and the president of the union . . . the funds manager of the union and several business agents of the union came to me and pointed the finger at the union as doing these things because I would not front.

One woman in the construction industry stated that she was sued for non-payment of fringe benefits, although other male union members were far more in arrears than she. And, when she tried to negotiate, the union would not strike a deal with her:

I had a contract . . . where the contractor did not pay me and I got behind in my fringes and [the union], in essence, shut me down. I tried and my attorney tried to work out some sort of a payment plan where I could pay them so much a month. We even went to a Federal mediator at Federal Court and he came back after three hours of discussion with them and said, 'I don't understand why they won't take a payment from you but they won't.' [T]he maximum that I ever owed them was \$8,000 and I know of cases of contractors that have owed them in excess of \$100,000 and they have made payment arrangements with them but they refused I can't tell you with any certainty but I absolutely believe it's because the Secretary of the District Council really had a problem with me being a female-owned business.

A female general contractor was also sued by her union. During the course of the scenario described below, slanderous remarks were made about women's mental abilities:

I've had great difficulty with the unions. We have been sued by the Teamsters union. The Teamster business agent told me at [a meeting]

several years ago that all women had mental problems and that's why they did not offer one of my truck drivers medical benefits for his wife's psychological claims. We've had unions who have harassed us in the jurisdiction on how we perform our work. We've had unions use the owner's agent in order to double-check our payroll. And we are a union contractor.

Another woman stated that, despite her repeated attempts to obtain the paperwork to join the union, she could not get it. So, she finally gave up:

We've contacted them to send the paperwork to us for joining and somehow it doesn't ever get done. After about the fourth time, I finally said the heck with it. I gave up. I have other people that I know that are in the same industry and I am told they got their paperwork like three days later.

V. BARRIERS WITHIN MBE/WBE PROGRAMS

Limited Access to Bid Information

A very high percentage of MBE/WBEs in this study, fifty-three percent (53%), reported encountering substantial barriers when attempting to obtain equal access to bidding opportunities. MBE/WBEs often learn of requests for proposals or bid dates only after they have closed. In addition, they experience myriad difficulties when attempting to be placed on a bidder's or vendor's list; even after being included on the list they may never receive bid notices. These barriers pose serious problems for MBE/WBE companies and put them at a disadvantage in growth and development.

Many minority and women business owners find that bidder's lists are kept secret from them. They are often prevented from gaining access to those lists by an already established contracting network that does not want to include them in business transactions. One MBE/WBE business owner stated that when she found out about a general contractor's bidder's list and attempted to be placed on it, she was required to submit financial statements and let the company speak to her banker, something non-minority subcontractors were not asked to do:

Bidder's lists for large general contractors are very secretive. I've had difficulty getting on one very large general contractor's bidder's list. They were demanding access to my bank records, and wanted to chat with our bank officer before they put us on their bidder's list. They

were wanting not only a list of all completed projects, but they were wanting copies of our financial statements. We found that rather offensive since we had an ability to bond; we did not see why they had to comb our financial records. They were unwilling to provide the same financial records back to us when requested.

I think it's an evasive type of maneuver. In talking to non-minority contractors, we found that they were neither asked nor expected to divulge that type of information to this contractor.

One minority contractor in the architectural field stated that, even with some public agencies in Kansas City, bidder's lists are pre-screened before requests for proposals go out. This means that some firms are not allowed to participate in bids, and are screened out for unknown reasons by unknown agency employees:

There are several organizations . . . [where] all jobs are not necessarily advertised. You have your information . . . on file with them and they can select from the people they have on file, who they think might be appropriate for that job. So, if they don't decide that you are appropriate for that job, you might not even get an RFP. Oftentimes because I keep a good relationship with my peers and consultants, I'll find out that there's an RFP out and call and say, 'How come we weren't submitted? How come we aren't allowed to be on this list?' And sometimes you can get on them and sometimes you can't. And so, it's a lack of advertising, which I think is just wrong.

Another minority business person stated that some organizations he has encountered have failed to include him in their bidder's list because of prejudice against the abilities of MBE/WBEs:

There are several organizations that . . . only have a short list of contractors and supplies they utilize. And you have to win them over to even get an opportunity to compete for the business. You know, you walk into situations like, for instance, [a local hospital]. The very first thing that came out of the [buyer's] mouth was that they had problems in the past dealing with minority vendors. And he doesn't really want to live through that again. He hasn't done anything [to notify me of bids]. [I] have not heard one peep out of him. So, you know, he's got a stigma that he has against dealing with minority vendors and he doesn't want to take the chance again.

One MBE/WBE described a local public works project for which he was unable to get on the bidder's list. After several discussions with project personnel he

discovered that they had deemed him unqualified to perform upcoming work, although he was performing and providing bonds for much larger jobs. His suspicion was that he was being excluded so that other contractors could take the work:

I am a . . . taxpayer and I as a member of this community should be able to bid that project and I can't even get on the bid list. I have gone and talked to the project managers . . . They told me that they didn't think I was qualified to bid their kind of work. Now mind you, I told you that the projects are varied in sizes . . . I think the largest one may be a million or two million at one time. Our company has bonding capabilities of 12 million dollars plus depending on the job and they are telling me that I don't have the capabilities of doing this project. I don't think so. I work for the biggest corporations in the world, General Motors, Ford, Chrysler, yet I can't bid work where our city is putting tax money into it.

I really can't put a finger on [why]. I think you have people . . . who are in position of authority who take a liking to one contractor over another . . . That's a major part of it and we don't believe that's how you should do business with people. We believe that we are in the contracting business and that you do your work on low bid and good performance and there is no extra reward. That's how you do business.

One African American businessman stated that, even when he has been placed on a bidder's list, he cannot be guaranteed notification of bid opportunities. In fact, he has experienced discrimination in attempting to obtain bid notices. Below he describes a situation in which he had been receiving notices from a company, but after he stopped by to introduce himself to a buyer, he no longer received any notices at all:

[Y]ou can get on the vendor's list, the bidder's list, but . . . I've gone to places and they would not respond to me. There's one company, a rather large . . . company here in St. Louis and they buy a lot of [a product I sell]. So we were bidding it. So I went over to thank the lady for sending me over the bids. We never got a job from her, but I wanted to introduce myself, you know, and tell her what we did, what we could do for the company. And as soon as I met her my bid [notices] stopped. Never got another one after the visit.

Other MBE/WBEs reported that they were able to obtain bid notices for jobs that required minority participation, but they were never notified of jobs without such requirements. One man describes his experience with a general contractor who was very pleased with his work and invited him to bid any time, and yet would not notify this man of bid opportunities that had no minority goals:

I receive solicitations in the mail and faxes about government jobs where there is a requirement for minority participation. But then when there [are] jobs where there is not a requirement for minority participation, I never hear about them from contractors. The only time I know about these jobs [is when I] look in the CMD [Construction Market Data] and so forth. I remember one job in particular . . . for an old and established contractor and I asked him how was the quality of my work and performance and he said it was good and as a matter of fact I could bid to him anytime. Then I looked in the Construction Market Data and I saw a [project] that he was inviting bids on, so I called him and he told me you have to be invited to bid in this process. And I went back and checked the CMD and it did say that; you have to be invited. He didn't send me an invitation, but on jobs that required minority participation he sent out an invitation. So it's kind of ambiguous to me, you tell me that my work is good enough that I can bid on any job, but in this case I wasn't invited.

One Asian business person stated that, although MBE/WBEs are encouraged to certify their businesses and take advantage of programs designed to assist them, there is very little assistance in overcoming the barrier of lack of bid notification. Like other MBE/WBEs, he often finds out about bids only after they are closed:

[G]etting certified is one thing, but then it seems like there's a big gap between that and really getting some substantial opportunity to get on projects or respond to projects I don't think the agencies really put much effort into the nurturing and development of DBE companies. It seems like, 'Okay, now you're certified,' then sort of business as usual I'm certified with the State of Illinois and Highway Department and also the Missouri Highway Department. I really haven't seen any specific projects that I can bid on or make proposals on. Sometimes we're not sent [anything] at all. So sometimes we miss the project because no one has alerted us to it. I don't have the manpower to look through all the newspapers or look through the Commerce Business Daily and kind of track all these things that are going on. [O]ccasionally we do get agencies that send us something that they know that we may be able to do and I think that's the whole point

One minority business person reiterated the MBE/WBE quoted above, in stating that she did not, as a small business, have the manpower or financial resources to track bids in various publications. Again, here is someone who needs assistance in receiving bid notification:

[The] State of Missouri sends out . . . they'll send out a list now. [But a large Kansas City public agency], they don't send out anything. If you don't see it in the paper – I think they print it like three times – so if you don't see it in the paper, you don't see it. You can go and get Dodge reports, and I think there is another one but they are very expensive. They don't have all of the bids in there but they have a goodly portion of them. As a small business owner, you can't afford to take on all those kinds of paper work.

Another MBE/WBE stated that he is on a bidder's list of a State agency and yet they send him bids for distant locations in the state rather than in his own area. And he hears about local bids that he missed through other local contractors:

[A]gain, [the agency] sends me bids, but they don't send me the proper bids. You know, they send me bids for the Kansas City area, and I've requested for the [local] areas which are closer to me. See, I'm a hundred a miles from Kansas City and . . . it's always people out of California or Georgia or Texas that secure these bids [in my area] . . . because I didn't get the information to be able to submit a bid for this area.

Another minority business person stated that it is occasionally through other contractors who ask her to subcontract to them that she learns there has been a missed bid opportunity:

That has happened a couple of times. How I basically found out about it was that the vendor who received the contract would hire me for a subcontract, where I didn't receive a proposal for the original contract, which I could have performed So this is a unique case where it came back around to me, where I wouldn't have known about it then if I hadn't been a subcontractor on those two specific instances.

Finally, one Asian MBE/WBE stated that, despite attending many workshops and seminars on minority involvement, agencies then drop the ball in providing him with proper access to bidding opportunities. The end result is that his company loses potential contract dollars:

I've gone to quite a few meetings and gone to quite a few workshops promoting minority involvement . . . there's a lot of programs out there And, up front they do put up a good presentation, but when it comes down to it, there's a lot of paperwork and in quite a few different situations, after going through all that, one piece of information was left out where I was supposed to be on a bidding list

or somehow be notified of these projects. Well, after two years, I find out that that's the information I need in order to know what projects are out there. I wasn't getting that information so I have no idea what projects are out there or what projects are being bid a small company has only so much energy before you kind of have to turn your head and move onto other things. Because you cannot survive by putting all that time and energy trying to pursue work. My company's been around for over three years and I think that besides one City school project that I received, and that wasn't really through minority marketing, I really haven't received any contract [in the public sector].

Primes Circumventing the Good Faith Effort

In order to satisfy the goals of many MBE/WBE programs, prime contractors must show that they made a "good faith" effort to contact willing and able MBE/WBE firms to participate in a project. If the prime contractor does contact such MBE/WBE firms and yet finds none willing or able to participate, they are released from satisfying the goals without jeopardizing the winning of a contract.

Many prime contractors, however, attempt to circumvent these good faith guidelines through various means. The primary method they employ is to notify MBE/WBEs of bid opportunities at such a late date that the MBE/WBEs are unable to provide a bid. In this way, a prime contractor can state that an MBE/WBE was contacted but failed to offer a bid.

Sixty percent (60%) of the MBE/WBEs in this study had encountered a prime contractor attempting to evade the "good faith" effort in one form or another. One MBE/WBE describes her experience with this syndrome like this:

I honestly get four or five calls a week from contractors wanting to know whether I am going to bid a job. When I ask when it's bidding, it's the next day or in a couple of days I think that is part of their good faith effort. You know, they have to show that they contact you. But, if they contact you two days before the bid and you can't do it, they have satisfied their good faith effort and they don't have to take a bid from you.

One MBE/WBE explained the pattern this way:

[I]t happens every time there is a bid let. We get a call from people the night before or else the day before asking for our bid for a particular item so they can fill their minority requirement . . . so they can put down that they made an attempt to get a minority contractor,

even though they won't use our numbers. They'll get a number from us so they can say they did make an attempt to get a number from a minority contractor.

One WBE stated that sometimes bid notification to her company comes as little as four hours before a deadline, when she realistically needs seven days to complete a bid:

Sometimes we are given less than four hours notice I don't consider that, frankly, a sincere effort to solicit my price. Our pricing requires time and effort to gather material prices, do take-offs, visit the site because we do underground work, and it's just not something that you can throw together in the blink of an eye. So the four hours notice . . . actually under seven days is inadequate for us. I think it is a stretch of a good faith effort – 'Gee, we called her and she didn't have a price for us.' I think that in their eyes, it will satisfy a good faith effort.

Another minority contractor stated that she receives regular bid notices from a prime contractor who has stated to a third party that this woman will never work on the prime's job site. Her interpretation of the continual bid notices is that the prime is satisfying their good faith effort with no intention of honoring a bid:

The funny thing about it is that I get regular bid solicitations from them so they can say they are doing their good faith effort. But when the owner of the company tells a person that you are doing business with that they don't intend to ever let you on their job site – do you think you are actually going to get a job with them?

A minority business person stated that his company often receives bid requests that give him insufficient lead time to complete a bid. And the frustration for him is that he has heard through the grapevine that prime contractors often use this failure to provide a bid as an excuse to slander his abilities:

Particularly with contractors where they have a predicament where they have to find a minority contractor to bid with them on a government job, where the law requires minority participation, they will call you a day or two before to bid on the job. Now when you're a small shop you have to wear many hats. I have to bid, I have to run the business, I have to do a lot of things . . . And anyway, on a job like that . . . one day or two is not enough lead time for a small business. For a minority contractor anyway. And so do you think that they expect you to get it done in that amount of time? Oh, they know you can't get it done in that amount of time. But nevertheless,

they have a name and they have a number, and they can just call back [to the agency] and say, 'Well, I called [So-and-So] and he couldn't come up with a price, he couldn't come up with a bid, or . . . I don't think he could man the job.'

One minority business person stated that she often encounters inadequate lead time to prepare when it comes to the interview process. She will receive one to two days notice. While there will usually be two to three MBE/WBE firms in the running, it is always one of the majority firms that wins the bid:

[A]fter submitting qualifications in response to an RFQ and RFP, you make the short list, and then they ask to have an interview the next day or within 48 hours, which is really inadequate time to prepare. When that happens it seems that typically the list includes . . . one MBE, one WBE and two other firms, typically majority, and the majority firm ends up with the job . . . there's a decision to be made and we're being asked to interview to legitimize the process. 'Look, we looked at these firms, including minority and women-owned firms, and they weren't as qualified as the other firm.' And it's a terrible situation because you can't afford to say, 'No, I'm not going to interview.' Because there is a chance you'll get the job, but in addition when it happens consistently and you've prepared for the interview, there's a lot of work and is overhead. So you tend to get on a lot of short lists and obtain a lot of interviews, which on the one hand is great, but if you know that you're there just to legitimize the process so they can say that they've looked at women and minority-owned firms, it just drains you and you get very frustrated.

According to the MBE/WBEs in this study, prime contractors employ another method to circumvent the good faith effort requirement. This is to list an MBE/WBE subcontractor on a bid without actually contacting them. In this way, the minority requirement has been fulfilled, the MBE/WBE does not know about the bid and will, therefore, not ask for the work, and the prime contractor can keep the work for themselves or offer it to a majority firm. The one factor that allows prime contractors to do this is an agency's failure to monitor the good faith effort.

One MBE/WBE explains her experience with this syndrome like this:

[W]e've had that happen, where people will just list us on projects and we won't know anything about it. We even had one situation where we knew that we were on a team, we were listed, and the prime consultant did all the work. We found out about it on accident. Not only did they do all the work, but they had our names on the drawings, [as if] we did them.

One woman business owner stated that she had been listed on a bid without her knowledge. However, when the agency called and informed her, she played along in order to try and get the actual work from the prime contractor. Although she did, indeed, get the work, the prime never paid her for it:

[H]e listed me as his WBE participation on a [project]. And I didn't know anything about it until the school district called me and then I went ahead and went along with it . . . I said I had known the consultant before. And I supplied a man to go with him to do the work that we were listed to do. However, I never did get paid for it. That upset me and when I sent the consultant my bill on it and they called me back and said, 'You are not to send the bill to us, you are supposed to send it to the school district.' . . . Well, of course, when I sent the bill to the school district, they sent it back to me and said 'We don't have a contract with you, we have a contract with this consultant firm. And you are to bill them.' . . . I never did get my money. It was, I think, about \$2,300 or 2,400 dollars.

One WBE found out through colleagues that, although she had not done any business with a certain contractor for two years, he was telling many people that he had used her on his jobs:

[W]e didn't find this out until a couple of weeks ago, that they have been listing us as being contacted and . . . they have never even called us to bid on any of their projects. I went to a meeting with WCOE – which is Women Construction Owners and Executives – and ran into a lady who asked me, 'Well, you guys do a lot of work with [So-and-So], don't you?' I said, 'No, we have had one contract with them and that's been a couple of years ago.' She told us that they were telling everybody that we were who they were using for the minority participation.

One MBE/WBE stated that, although he knew he was listed on a bid, the prime contractor manipulated the dollar amount of his contract. Though the prime only intended to give this minority sub one hundred thousand dollars, he listed him for 1.1 million dollars:

[T]his happens everyday. We were bidding a large job and I can't remember who it was with . . . and when the bid came down, there were certain minority participation requirements on there, like about 25 or 30 percent. The [agency] called me and told me 'We've got your bid in here for 1.1 million' or something like that and I said 'Excuse me?' Because they had to list a minority participation. And I said, 'No, that's not so, I haven't even bid, I never even worked that

job.' But they had listed me down for \$1.1 million worth of work which I never bid. Well, I went over and talked to them and I explained to them we just don't do it that way. And they said, 'Okay, well, we were under the wrong understanding. Well, here, we want you to go ahead and bid this part of the work anyway.' So I went out, spent a couple of weeks on it, bid that part of the work, and I come up with \$1.1 million, which is obvious. And they said, 'No, we were looking at more like \$100,000 worth of work for you, not \$1.1 million.' So, we just kind of backed out of it gracefully and said, 'No, we're not going to do any of it.' I mean this happens every day in St. Louis.

Bid Shopping

Although majority firms often have long-standing connections that help them obtain contracts, MBE/WBEs must often rely on low bids as their primary avenue to contract awards. However, practice of bid shopping often undermines an MBE/WBE's ability to supply a low bid. The practice involves contractors who take the lowest bid they receive and "shop" it to the higher bidders, requesting that they lower their bids to beat this one. In cases where a prime contractor may want to hire an old colleague or friend, he may inform that person of the lowest bid figure so they are able to beat it by a few cents or dollars.

Fifty-three percent (53%) of the MBE/WBE interviewees have encountered this practice in the course of running their businesses. One minority businessman described the scenario this way:

[H]ere's what basically happens. You go give the bid to the prime, night of [a bid] letting or whatever. The [awards] come out about a month later, and you're hearing from other people . . . 'Yeah, you had a good price with us.' You go to the guy who [won] the job and, 'You weren't low.' It's [that] they have their own guys they want to give it to. Which you can tell in the bid tabs, that his price was maybe just a little bit lower.

An African American businessman recounted one situation in which, during the bidding process, he had been told by several general contractors that his bid was low. However, although a majority competitor of his had a bid approximately \$50,000 higher during the bidding process, that majority firm miraculously ended up \$2,000 under his bid and was awarded the job:

I knew I was low [bidder] and everybody told me I was low . . . everybody told me that I had a good number and that there was no problem with it . . . I know [my majority competitor's] number to

everybody was higher, quite a bit higher as a matter of fact. [A]nd when it came time for the awarding of the contract I called to find out where we were and if we were low, and they said no, [my majority competitor] was a couple thousand dollars under me, but I think he was almost \$50,000 [higher] in [the bid]. [S]o in other words they just gave him last look to beat my price.

Bid shopping even occurs after a contract has been awarded. As one minority contractor explains, this is a way for prime contractors to increase their contract dollars:

[B]asically they will call you up and sometimes you're on the team and sometimes you're not. They will call you up and they will say, 'Can you give us a proposal to do this work?' And you give them a proposal, they will turn around and say okay, and then sooner or later they will call you back and say, 'Oh well, your numbers are too high, we got somebody else who will do it for less.' Interestingly enough this happens when the prime has already received a contract. Their fee is already set, and so at this point they are just increasing their margin by shopping you and bringing in other consultants that will do the work for cheap.

Another minority contractor stated that he has had his bid shopped on several occasions after his inclusion in a bid has helped a majority contractor win a contract award:

I've had other problems with the larger Caucasian contractors calling you and sitting down with you and working out a price and getting the figures together, then shopping for prices with minority contractors after they got the job off of your figures. [T]here's always somebody that's out of work that's willing to do it less if [the general contractors] say, 'Hey, I got it here at \$2 a yard, can you do it at a \$1.50?'

Many MBE/WBEs have firsthand knowledge that bid shopping has taken place on projects for which they bid. One minority business person stated that, after a prime contractor received his bid and found it to be the lowest, that prime called him back and, without realizing it, shopped his own bid to him. Even so, the prime contractor ended up submitting this minority businessman's bid. And yet, after being awarded the contract, the prime did not allow this minority subcontractor to do the work.

Another MBE/WBE found out that his bid had been shopped because a colleague was actually shown his bid by a prime contractor:

[M]y bid was shown to one of the guys that I visit with and drink coffee with, and he refused to bid after it because I had submitted a bid. [T]he other [example] was I was shown a bidder's bid and asked to compete with it . . . I submitted a bid but my bid was higher than the bid that they shopped on me and I ended up getting [the job] anyway.

Several MBE/WBEs in this study stated that they had experienced bid shopping when, after receiving a contract award, the contract was thrown out. In the interim their bid was shopped and when the job was re-let, they were underbid:

You [were] talking about shopping your bid? Yes, your bid is shopped around. I bid on a particular job for [a municipality] . . . I bid on the job . . . and then it was thrown out for some reason. I came back and I bid it again, and a guy came in \$100 under me.

Another minority business person also lost a bid that she had originally won, after it was canceled and re-bid. The second round of bidding allowed one of the other competitors to undercut her bid, and this MBE/WBE lost the contract.

Denied a Contract Despite Being Low Bidder

Even when minority and women business owners win a contract through a low bid, they cannot be assured of actually doing the work and receiving payment for it. Thirty-five percent (35%) of the MBE/WBEs in this study have experienced such difficulties.

One female business owner stated that, although her company had been the low bidder on a seven million dollar contract with a local company, she was not given the contract. While the company would have used her, the Project Manager they hired was not inclined to do so, and she was forced out of the job:

We bid approximately . . . seven million dollars worth of work when we were the low bidder to a large company, here in town. That particular company hired what they called a Project Manager to run the processing of the construction. Once the bids were out and they went back to the Project Manager and told him that they were going to use us, this particular guy did not like us and told him that they couldn't use us. And we were the low bidder, on seven million dollars worth of income to my company, and he made these people use somebody else . . . I don't know if it's because we are woman-owned. You can speculate, and it is probably for that reason.

Other MBE/WBEs stated that they, too, had lost jobs despite being the low bidder. The reasons vary. One minority business person stated that he lost a job at [a large corporation] after submitting the low bid. The buyer chose to work with someone else:

There was a project [with a large corporation] where I had the lowest number and I didn't get [the job], based on the fact that the buyer chose to work with a company that they had dealt with before. And the rationale there is that they don't know anything about me and they don't know if I would be able to perform and they didn't know whether I would be able to excel. I mean . . . they used somebody else.

One minority business owner stated that, although his company submitted a lower bid to a Missouri public agency than did a multi-national corporation, his bid was not accepted. Instead, the agency insisted that this man be set up as a protégé to the larger company, and that the two handle the contract together. However, this minority businessman insists that the contract was not beyond his company's proven abilities, and that he should have been granted the job on the basis of the low bid.

One man explained that he has lost many jobs, despite being the low bidder. He stated that many prime contractors have front companies to which they pass MBE/WBE work:

[W]e can call and get tabulation sheets, which gives the item number for that particular segment of the project, and it says how much per . . . hour or per item, and we know what we bid, and often our bids will be lower than that, but we still won't get that portion of the work Well, mainly [it's] because they use someone that can do a complete estimation package, or else they're using their buddies or they're having someone front for another company . . . they have their pet minorities, their fake minorities.

Several MBE/WBEs stated that, even with public agencies, their low bids are rendered useless when the entire project is canceled and sent to be re-bid. Often MBE/WBEs will not be informed as to the reason for the re-bid, as was the case for the minority business person quoted below. Although he had won a low bid, the city in question decided to re-bid the project and this contractor's prices were undercut:

We were sent a registered letter telling us that we were awarded the low bid and to proceed with a Letter of Intent that our contract would be forthcoming. We started to purchase materials and prepare our jobs and you know a [multi- million dollar] contract for [my line of work] is a thoroughly substantial contract. So we stopped bidding

other work to start gearing up for this particular job And then the city decided that they were going to reject all the bids and we didn't get the job. A [competitor] here in town [won the bid] because they had a process of re-bidding the project. But if you were a contractor and understood the sayonara of having your price already out on the street . . . and then you are going to rebid the same entire project? Then everyone already knew where my markups were, okay?

A female business owner stated that in another Missouri city she won the low bid for a local project. However, this bid was also thrown out and re-bid. As with the business owner above, this woman's bid was public knowledge; in fact, she believes it was actively "shopped." And after the second round her bid was undercut by a white male firm from another city. This in spite of the fact that she had assisted the city in designing the job.

Other MBE/WBEs submit bids they believe to be low, given their knowledge of their industry, but have no proof that their low bid is being rejected. One man, suspicious that his very low bids were being ignored, bid at distributors' prices and still was not awarded a contract. Later he discovered that the buyer from this agency was fired for not accepting any minority business:

I charged the City the same price that I bought [the items for] – my distributor price – and I still wasn't awarded the contract. And I just . . . got tired of bidding on things. I was bidding on things every time they sent me [a notice] and I said, 'Wait a minute, let me find out what's going on.' So I just went ahead and bid the same price, the distributor price, and still wasn't awarded it. There was a buyer there, I heard they fired him later because they [were] having problems with him not giving [minorities] business.

Manipulation of Work Scope or Contract

Even if minorities and women win a low bid and obtain a contract, they cannot be guaranteed that they will receive the full dollar amount of that contract. Additionally, MBE/WBEs are often pressured to do work beyond their scope, and are manipulated into giving up altogether a contract they have won fair and square. Oftentimes there is no agency monitoring of these contract alterations, and MBE/WBEs are on their own. Over forty-five percent (45%) of the interviewees in this study have encountered some form of contract manipulation.

One female business owner described a situation in which, after refusing to accept a contract that was worth only a third of her original award, she lost the entire contract. She and other MBE/WBEs protested the fact that they were not being given their contracts on a [municipal] job. After this protest the city allowed the prime to

offer her a contract that was one third of the original. When she rejected this offer, the City allowed that prime to get another WBE firm to substitute her:

It was seven months after this [prime] contractor got his contract with the . . . City and only after . . . [our local MBE/WBE coalition] threw a fit about our contractors not giving us our contracts, I was given a contract that was one third less than the dollar amount that I was listed on the affidavit for – and the scope of work was expanded. When I refused to sign it, the City allowed [the prime] to go out and replace the WBE participation with contractors that had not even bid the project But they hadn't bid the project to begin with and they were not listed on this affidavit. It was a sworn affidavit. It says, 'If I get the contract with the City, I am going to use these MBEs and WBEs for this dollar amount.' I don't understand how they got away with that.

A minority business person stated that on more than one occasion his scope has been reduced or the contract canceled. It is his suspicion that, in these cases, a friend or close colleague of the prime contractor is often the replacement:

There have been a couple of occasions where I have lost out because somebody's a friend [to the prime] That's all. They had a little bit more information than I did. Well, in one particular place I went in and submitted a bid to do a specified amount of work by contract, and then after the contract was let to me, they would say, 'Well, we don't want you to do this or we don't want you to do that or we don't want you to furnish supplies.' And of course that would eliminate dollar and cents also. Well, the time it happened I just refused to do the scope of the contract, and apparently they went out and got someone else to do it.

Another MBE/WBE explains the scenario that he has experienced on more than one occasion:

They would take like a \$750-a-month contract they had awarded to you or to me and then the day you start the contract, then they'd say, 'Well, this, this, that and the other we don't want you to do. We're going to reduce that part of the contract and it will end up being a \$350-a-month contract.' I just say, 'No, that's not what I bid for.' It happened in one case and . . . I don't have the slightest idea [why they] did that I think they had somebody else that was a friend to or related to the company that would do it.

Other prime contractors use the monies allocated for an MBE/WBE subcontractor's portion of a job elsewhere, and then reduce the MBE/WBE's contract accordingly. One female contractor explained her experience with such a scenario. In the end, the prime contractor tried to blame her for not managing their own budget, although they had no control over the money:

[O]n the contract we had, it had a scope of services we were supposed to wind up . . . by June 30 of this year, and [the prime contractor] essentially spent some of the money out of the budget without telling us. So we basically ran out of money without being able to finish the scope of services, so they had us stop work in April [T]hey didn't even say sorry. They said, 'Well, you should have done a better job of managing the budget.' They sent me this letter saying they expected me to manage the budget and I sent a letter back saying, 'If you're going to spend \$30,000 of the budget you need to let your subcontractor know that you spent the money and what you spent it on.'

As many MBE/WBEs experience, prime contractors often limit their participation in a contract to the exact MBE/WBE goal, rather than to the money a particular task will cost to complete. One business owner explained her experience with such a situation like this:

And [the prime contractor] told me, 'Well, this is the scope of the work.' [So] I gave them a fee. And then they came back to me and they said, 'Because you are a MBE/WBE we're only allocated to give you so much percentage, so I need a fee from you of \$31,000. So if you need to reduce the scope of the work, reduce the scope of the work, we will do that.' [T]hey're only using me to meet whatever ten percent requirement that the City is putting [out there]. And it is really disheartening to be treated like that.

One person stated that he has had a prime contractor actually do his scope of work and then, after it is finished, offer his firm a menial task by comparison:

[W]e've had our scope changed after the contract has been awarded. [I]n fact, rather than telling us, 'We don't want you to do that work,' they will do it and say, 'Oops, we're sorry, we did that already, can we find something else for you to do?' And that something else is most insignificant.

One minority businessman stated that he is not only given menial jobs to do by prime contractors, he is also monitored so closely that he has very little responsibility on job sites:

[T]hese are the jobs that nobody else wants. So what [the prime contractors] do is they will put out a bid inquiry, a proposal, and they will bring in four or five minority contractors to bid the job [They do this] to fulfill their minority participation requirements, or to meet their goals. The job is already set and planned. There's two different ways [they handle it] – they'll give us the [menial] jobs that nobody wants, [or] they'll pre-plan the job for us so that all we have to do is have a Black face on the job with a beeper or a telephone and the job is done for you already. You already have your subcontractors listed and chosen for you.

One person explained his experiences being given menial tasks in the architectural field very succinctly:

[Prime contractors] have attempted to [give us work like] drafting instead of design, part-time inspection instead of full-time. That kind of stuff is what they try to do. And like I mentioned before, one time they wanted us to pass through an expense rather than provide professional service.

Other MBE/WBE subcontractors find that they have been pressured to do more work than their contracts state. One man has been forced to bring in an attorney because he was experiencing so much pressure. He describes how the situations often unfold:

[T]he type of work I do, someone would come out and tell us that we've got to do this or that [when it's] not in the specs of the contract. And if we . . . don't do it, then I've got to contact my attorney and then that starts to cost money, just to get this [prime contractor] and tell him, 'Hey, look, it's not in our original contract's scope of work.' They will do everything afterwards to make our job a lot more complicated, and before you know it, they are trying to take you off the job.

Some MBE/WBEs have felt pressured to do that extra work when asked, even without compensation. One man explains it this way:

Well, we've done portions of jobs that wasn't any part of our contract, and really never got paid for it . . . if we were going to stay on the project we would have to do these [things] in addition . . . we would do some extra trenching or some extra work, you know, some of it was pretty nasty, like we did some sewer work It doesn't happen on every project, but there is always something that somebody wants you to do extra, when you get there. But, you know, we don't mind doing an occasional thing once in a while, but there were some

projects where the privilege has been abused and it's saved a few hours or we've given a day or we've been there for an extra week or something. I mean, it takes up a lot of our time.

Some MBE/WBEs, instead of being pressured to do more work, end up losing their entire contract. The reasons for these losses are varied and very unpredictable. One business person stated that he was denied a job for a Missouri municipality because the job was deemed too big for him. The cancellation came two days before the job was to start:

[W]e got the job, we bid it, we [were] the lowest one, we did everything [T]wo days before we had to go to the work they found out the job was much bigger than what it was supposed to be. Then they picked another company and they just told us, 'No, we gave it to another [company] because it was too big for you. [But] that was a job I could do, too.

A WBE in the highway construction industry explained that she had a contract terminated without her knowledge simply because the prime contractor found a WBE to do the work for less money. She was half-way through the job and, although the loss devastated her annual income, the Highway Department offered her no recourse:

I had a rather large contract . . . it was such a large job that my part was going to take place within a two-year [period]. Well, there was a certain amount of tonnage that all of a sudden they just didn't call us to place an order [for] and we still had one-third or close to half of the contract they had not fulfilled yet. So I started calling the contractor, and I often got runaround, 'Gonna call you back, gonna call you back, leave a message,' and whatever, so I investigated a little bit and I found out that . . . another minority was doing the job Well, what happened is that they got this other lady all the way from Kansas City to come all the way to south of Missouri for less money to do the same job that I was doing for less money They submitted a waive to waive my services to them and replace me with this other minority. And everything was done. I was never informed, not by the telephone, not in writing, I mean nothing, just zero.

Front Companies

An unusually high number of minority and women business owners in this study stated that they encounter "front" companies in their professional field. "Front," in this case, is defined as a company that purports to be minority or woman-owned, but is actually owned and or run by a white male. When MBE/WBEs lose contracts

specified for them to companies they know or believe to be fronts, frustration over the loss of vital business runs high.

One woman described a conversation in which she offered to provide WBE participation to a prime who was being pressured by agencies to meet MBE/WBE goals. The man, however, stated that he didn't need her help because he planned to make his wife a WBE:

I called him up on the phone, this is a competitor of mine, and I told him, 'I know that they are putting pressure on you to get your MBE or WBE participation and if you want me to work with you and put a crew down there with you so you can get your participation, I would be glad to work with you.' What do you think he said? You ready? 'I'll just get my wife to be a WBE,' and I said, '[NAME], you know I don't know where you are coming from or what you are trying to say here.'

Other MBE/WBEs have been asked to operate as fronts themselves, that is, to allow a majority prime contractor to run contracts through their office without doing any of the work. One man described how a prime made such a request to him, and how his refusal may have cost future work:

I [do not] want to play minority front. I don't want to be a front to any big individual who is out there saying, 'Put your name on the dotted line and I'll take care of the rest.' No, I won't do that. Oh yes, it has occurred several times [that someone has asked me to be a front], not only in railroad work, but as a general contractor, and I refuse to do it. I think a lot of that – because of the people and who they were and the political power that they have behind them and who they know in the City and the State and so forth – had a lot to do with me not getting [bid] information also. Just because I wouldn't participate as a front.

A female business owner stated that she had received no less than seven propositions to allow a majority firm to use her company as a front. The proposals included offers for her to take a "permanent vacation" while a majority company took over her business:

[I've received] seven [offers] directly, with people putting together their portfolios and telling me to take a permanent vacation to Florida, this is a direct quote. A permanent vacation to Florida, and I can have my house down there, have anything I want, a car, my kids can have a college education, while they run my company.

One MBE/WBE stated that in his industry front companies are easy to spot because they use the equipment and facilities of a majority-owned prime:

There are a lot of fake minorities in this town, in this area, in fact, in this whole state, because I've worked around them and I've seen evidence of it . . . because they have the same people on the payroll as the prime, they drive the same trucks, they use the same equipment. And the prime only uses that minority, and the minority only works for that prime.

Another minority business owner described how front companies operate in their industry. And, despite his complaints to the major agency in this industry, nothing has been done to stop the problem:

[A] lot of contractors, they have their own wives, their nieces, you know, their relatives . . . they assign a name for a corporation and then run all the paperwork through that person. So, in my case, I have to deal with loans, I have to deal with Workman's Comp, I have to deal with payroll, with payroll taxes, and all that, and try to go out and get work. [A]nd [then] you get back from the contractor that he already has a minority. Well, I know what they're doing. I know that they're just passing paperwork, but they don't keep the opportunities for the people that really stand up and try to do it right . . .

[W]e have [a front] very close to us. And they have the name of the wife in the Board of Directors of their company and . . . I have never seen the lady there. All it is is the man and they have all men union people working and all that, but I have never seen the lady there. And I know these people, very close. And they're making tons of money.

The fact that front companies can cut deep into their profits hits many MBE/WBEs quite hard. And yet, efforts to complain often yield no results. One woman described a situation in which, after a majority company found out she had a profitable business scheme, they set up a minority front company to copy her idea. Rather than working with her to invest in her company, they set up a front:

[I]n order to beat me rather than see me be successful, [this majority company] found a way to get around me. When they found that the venture I was trying to accomplish was going to be a money-maker, they went and found someone else to set up as a minority. They are minority; however, they weren't going to be involved in the business. They were merely going to be the head of the business on paper and were going to allow other majority members of the firm to run it, so as to vie for the Federal contracts that they otherwise would have. I

did [complain] and it didn't do anything. I complained to the SBA and it got shelved. I mean it got just swept under the rug.

One man stated that, although in the Kansas City and St. Louis areas there are large minority populations, many of the MBE/WBE contract dollars are being funneled through front companies:

Kansas City and St. Louis have a very large minority population . . . A big problem that I have overall is that a lot of the percentages of utilization are going towards companies that are just running business through their facility and are not actually performing a commercially useful function. I mean the majority companies are paying minority companies a fee [so that they can] do the work.

Excessive Certification Procedures

Although many MBE/WBEs openly express the positive effects MBE/WBE programs have had on their business and professional development, most state that certification requirements pose an undue burden on their company. Because most agencies require their own certification process, MBE/WBEs expend precious hours and financial resources in getting certified.

Sixty percent (60%) of the study MBE/WBEs stated that certification requirements put an excessive strain on their business. One minority business owner described the time and resources required of him to complete all of his certifications:

You've got four or five different government entities you have to deal with. And they send out a certification paper maybe thirty or forty pages long, and the information that they ask for, I have no objections giving it to them, but it's just so time-consuming. And then when I take my time and fill it out, turn it in, there's no action back on it. When I was in partnership I took my time to fill out the certification, sent it in, it never was acted upon. Then I got wind that it was because they didn't think that he was a controlling partner . . . the certification process is a farce – we would have very little work if it wasn't for [the programs], you know – but it's just too time-consuming, it's too much paperwork.

One minority business person stated that the certification paperwork required by some MBE/WBE programs has made the potential orders from those agencies not worth the time:

The minority paperwork, the certification papers . . . I think there is too much paperwork just to bid on certain items and some of these orders aren't [big] enough to merit the paperwork itself, I think.

One MBE/WBE in the construction industry stated that the enormity of the certification paperwork puts her at a disadvantage compared to non-minority contractors:

Non-minority contractors . . . are not required to submit [to the certifying agency] the same written business plan that DBEs are required to submit. The amount of agencies who are certifying, each require different paperwork and they have different formatted applications for approval as a DBE and it makes oftentimes double work . . . There should be a central certification involved at least — every owner should only have one certification in order to begin streamlining that type of double work Because it just ends up costing you so much money. It costs me money as a subcontractor if I want to have their DBE certifications or minority certifications. It costs me as a taxpayer money for my government not to share information back and forth between departments.

The same MBE/WBE stated that certification procedures are part of the pressure put on minority contractors that is absent for non-minorities:

There are more standards [for minorities]. We have to be the WBE. We have to be able to perform. We have to be competitive in price. We have to have qualified personnel. We have to toe the mark many more times than a non-minority contractor was. [With one public agency] we cannot even be considered a . . . DBE if we do not submit a business plan with our . . . DBE recertification. Non-minority contractors are able to bid as a sub and as a prime with [this same public agency] without submitting their business plan. DBEs are not.

In addition to the repetitive paperwork required by multiple agencies, there are often requests for submittals that simply go too far. One individual explained that one Missouri city asked for her personal income taxes in lieu of corporate taxes because the business was new. In the end, this business owner fought the request and was backed up by the city attorney who stated that the request was illegal: "I practically had to give them a sample of blood I ended up having one of the City attorneys call the Human Relations Department and say, 'You can't ask for personal income taxes.'"

Other MBE/WBEs spend a great deal of time and money in legal fees to prove that their businesses are not fronts. One MBE/WBE described her case:

Well, in my particular case in the certification process, the city . . . did not want to accept the fact that I was in a position of authority here. They wanted to imply that the male figures that are in bids had more power than I did and that was 99% of the problem. And it took me about, I'd say, almost not quite a full year to get the certification, lots of legal fees and a lot of aggravation to get the certification.

Another MBE/WBE stated that her certification applications have taken from six months to a year and now require an attorney because she cannot make any progress in the process:

I have the applications in – it's just takes forever to be approved. I have not been approved. [A] St. Louis [public agency] is one Then there is one pending with State of Missouri and I have forgotten which it is, if it's Highway Well, it's been over a year for the St. Louis [agency]. The other one was probably about six months ago that it was sent in. I have turned them over to attorneys because I don't seem to be getting anywhere.

Most MBE/WBEs interviewed in this study echoed the conviction that the certification process needs to be streamlined. This will allow MBE/WBEs to spend more time soliciting work, winning contracts and developing their businesses. One individual stated:

I think if you're certified through one central agency, which I thought I had when I went through the [Clearinghouse], that you would just pass that certification on to other organizations, but that doesn't seem to be the case.

Another minority business person stated:

I have been certified by one, two, three, four, five groups. Okay? And, in the certification process, each of these groups asks basically the same general questions. It would appear to me that every time we do this thing it requires going through and filling out an application and then running the copies and stuff we already have run copies of before. And I would think there should be some kind of mechanism that would say that if, for example, the State certifies you as a minority vendor then it should be okay for the City and it should be okay for the Airport and it should be okay for the State of Illinois. Now if there are one or two to three questions that may differ, that's okay. But to have to complete the same application time and time again is just ridiculous. Especially it takes time and resources to do that.

And the same sentiment was echoed by yet another business person:

I think in some instances [certification] is excessive. I think that there are too many regulatory agencies that are in place. I understand why they are in place, to stop people from starting up phony companies or fronting for any other people, but I think that once one is certified, primarily with the City or the State, that should help you in your certification process so you don't have to go through nine yards of reduplication, reduplication, reduplication of information. Primarily with [a St. Louis public agency], I mean it's ridiculous. Getting certified with that particular group has been a pain, it's been a lot of pain.

VI. BARRIERS WITHIN STATE OF MISSOURI PROGRAMS

Minority and women business owners experience a myriad of barriers in attempting to conduct business with State of Missouri agencies. These difficulties include excessive certification requirements and delays, barriers to equal access to bidding opportunities with the State, and a network of majority employees within State agencies that seeks to prevent MBE/WBEs from participating in contracts on an equal level. These patterns are outlined below.

Excessive Certification Procedures

Many MBE/WBEs in this study reported that certification with the State of Missouri had taken excessive amounts of time, often from six months to one year. In addition, MBE/WBEs reported that the paperwork was so voluminous as to put them at a disadvantage to their majority counterparts. Certification paperwork often takes up valuable time in which an MBE/WBE could be soliciting contracts. One man stated that, after being certified by the State, he seemed to only fill out more certification forms than bids:

I don't really get any quotations from the State. I know they buy a lot of items [but] I don't get any of that Once you've got that minority status, you put that minority status down there on your application and they put you in a whole different category. They put you in a category that you've got to waste more time filling out [MBE/WBE] papers and forms than you do in filling out quotations.

Another minority business person described her frustration over not only enormous delays in obtaining certification from the State, but then not receiving any appropriate bid notices after going through the certification process:

To be real honest with you . . . I haven't seen any bids for the type of work that I do. A good majority of the State work is highway work which I don't do. I do intend to bid – I think there are going to be some [appropriate jobs] coming up – I do intend to bid on those. I think it is more that I have just not seen a job with my scope of work than it is anything. [And] I never received my certification. I notified them when I very first started business in 1991. I sent in an application to be certified and . . . I take that back, I did receive that certification like two or three years after I requested it. I called a number of times only to be told that the person who was in charge of the certifications had taken a leave of absence and they didn't have anybody that was taking it over and to be patient. If there was anything that I wanted to bid on, I could put down that my certification was pending and if I was successful then they would take care of it then.

Although the State assured the above individual that, if a bid opportunity presented itself her certification would be forthcoming, others have found that without certification complete, they are not always able to participate in State contracts:

[T]here were a few times where I was supposed to be the supplier on jobs but since I didn't have the official certification, sometimes [the State] will accept it that way and sometimes they will not on jobs . . . I think I have [lost several jobs].

The same individual, however, is still waiting for official certification. Although her attorney has handled the application, the process is not complete and, as time goes by, additional contracting opportunities are being lost:

I had an attorney send [the certification application] in. I think they have checked several times and it just hasn't come through yet. There doesn't seem to be any problem with it, it's just that it takes time.

One individual stated that the length of the State certification application posed problems for her, simply in finding the time to fill it out. Because most minority and woman-owned businesses are small, having the staff and time to fill out such forms is difficult. In this person's case, it took three weeks to get the forty-five page form completed: "We took a long time with the State of Missouri [certification]. It was forty-five pages long . . . It took about three weeks. But once you are certified it is fine."

A Hispanic business owner reported that the process of being certified by the State took one and a half years for her company: "I know a lot of people that have been certified with the State and they have not had anyone visiting them at their offices . . . just because they know the right people. I did not get certified in a year and a half just because . . . I don't know. I'm still trying to get that answer."

One female business owner stated that because she had only been able to obtain one State contract in a number of years, the burden of the State's certification process is not worth her effort. The time she spends on the paperwork does not merit the contract dollars she has received from the State. In addition, she explained that several of her female colleagues are experiencing the same difficulties, and are also giving up applying for State jobs.

Although many MBE/WBEs confront the existence of front companies within their fields, proving that they themselves are not fronts can sometimes cost large sums of money and require valuable time. One WBE who was forced by a bank to have her husband, who is not involved in her business, co-sign a loan in order to receive the money, then had to endure a lengthy investigation and appeal in order to satisfy the State that she was responsible for the business:

They said, 'How come your husband signed on your loan?' I said, 'Because I couldn't get a bank loan without that.' I showed them that I had consistently through the years made more money than my husband and they wanted me to open up my own checking account and have my own separate checking account in my name only to prove that I was somehow separate from him. Well, what I had done was that I had taken out a loan in my own name through a different process than the bank and had paid that loan off within six months and I had put the loan proceeds into my joint checking account and then wrote that check out into the business account. They said that I needed to have started my own checking account in my own name . . . Well, [I] got turned down [for certification] and then on appeal – I appealed it – I did exactly what they wanted me to do. I opened my own checking account. I paid back the loan . . . I took that down there and that satisfied them.

One single woman who owns a business and also has a full-time job was unable to satisfy the State that she was not a front during a crucial time to gain State work, shortly after the 1993 floods. Because this woman maintains a full-time job in order to support the business' cash flow and to provide insurance for herself and her children, she was denied State certification until a successful appeal. This, despite the fact that all of the loans, leases and equipment are in her name.

Difficulty Obtaining Bid Information

Once MBE/WBEs get through the certification process, they are often faced with the challenge of gaining fair and equal access to bidding opportunities. Either through State agencies' failures to provide adequate bid notice or through unadvertised and selective bid letting, MBE/WBEs often find themselves at a disadvantage compared to their majority counterparts who conduct business with the State.

Some MBE/WBEs who have attempted to gain bid notifications in their fields have encountered resistance and anger on the part of State officials. One man describes his experience this way:

[W]e have submitted letters to every [appropriate agency] in the State of Missouri . . . and we never find out until [a job] is already halfway done or it's completed The State never even takes the time or liberty to contact us. We're not close to them, let's put it that way. Because there have been times when I have called and demanded [bid information], and if I go to a higher personnel division, they really get very angry at us for doing that . . . because we're trying to seek information to find out about these jobs I know a friend in there, he'll call me and tell me, 'We just got information on this project.' And I will turn around and call [the State agency], and then the individual call[s] me . . . and tell[s] me that they haven't got all the paperwork finalized on it, so I can't continue to keep calling them everyday to find out what's going on, so we just leave it alone. I mean, if they don't want us to provide our services, then we feel we owe nothing to the State as well.

One MBE/WBE who owns a design firm described encountering different difficulties with various State departments. With one department, he must follow State Senate Appropriation Bills in order to find out about jobs and then submit a proposal without any indication as to whether his firm will even be considered. With another department, he continues to receive construction bids from the State although he has notified them repeatedly that he owns a design firm.

Another minority businessman stated that, although he has filled out the paperwork and is officially on the State's vendor's list in his field, he neither receives bid notices from the State nor bid requests from prime contractors who are bidding the jobs for which he would be a subcontractor.

Many MBE/WBEs attribute their difficulties in obtaining bid notices to a closed system of already established employees and contractors that operates within the State. One MBE/WBE stated:

We are not finding out [about bidding opportunities]. We know that there are jobs being awarded, we just aren't contacted about them. We don't receive anything. [We don't hear until it's too late], if we hear about it at all. But we know that there are contracts being awarded, we just don't know anything about them. The State system is very closed. Now, it's not that the City system is really that much more open, it's just that the City has a system where everyone is considered for something and there is some integrity in the process . . . the information is public and you're going to find out about it one way or the other. The State is just a closed shop, I mean, we just don't hear anything. We don't get notices for anything, so we don't have an opportunity to submit requests for proposals . . . we will never get an opportunity to work.

Another business woman stated her experience also indicates that State bid notices are not offered on a fair basis; if you know someone on the inside you are far more likely to receive bid notifications:

It's very difficult to determine which department to go to or which person to talk with. If you strictly start to go through some sort of bidding process [alone], it's nearly impossible to get a job with the State. But if you can make a connection with somebody that is a manager at some level within the State and get referred, then it's much easier.

One minority contractor stated that many general contractors on State jobs will only use MBE/WBE companies if they are forced to by project goals. He finds that often majority contractors will not use minority participation with firms that provide his services. And, the only requests he gets for State bids are unrealistic ones:

I bid work, it's just the companies don't really use you unless they have to have a percentage of minority participation, and then they will generally try to pick it up in concrete or electrical work or something like that. Yeah, I get [bid requests] from all over . . . and I think it's basically [general contractors] asking for quotes, but a lot of them know you don't go that far . . . they get it because I think they're required to show that they are trying to solicit minority participation.

Many MBE/WBEs reported that, despite the fact that they are on a bidder's or vendor's list for a particular State department, they still do not receive bid notices. And, many of them visit State offices in person to look into the matter:

I have been to the State of Missouri on at least three different occasions and each time I'm there for another reason, I stop in and

... speak to the [appropriate department]. I have never seen a bid come out of there. Like I said, I know that I am on the [bidder's] list, it's just that I haven't [been notified].

[When I ask them at the State] they say there hasn't been a need [for my product] and yet I see the products all of them time, so that's not true.

Another MBE/WBE explained his experience with inadequate notification like this:

Just this past month, I received two requests for bids from the state and one from Jefferson City, which I went ahead and bid on. But it was just recently. For the past two years [I received] no type of bid or anything from them. I went to Jefferson City last year on two occasions and there was nothing on the board that I could bid on. Yet, I reminded them that I hadn't received anything and the people there at the Purchasing Department told me that that was just the way the system brings up the bidders and they send out the bids per the computer system. That I needed to be patient.

As several of the above-referenced MBE/WBEs stated, however, there are strong indications that often jobs do not go out for bid that should. One businessman stated:

I notice a lot that [some] of the jobs – I don't know how many because I don't know many jobs are out there – do not go through the bidding process. They're just given without anything else going on. And that's another way that I miss out on the work . . . there are certain things that don't go out for bid. [L]et's say that the State of Missouri has a catalog and it has pictures in the catalog and I ask who took the pictures and they'll tell [me] and I'll say, 'Well, what bid went out for that?' [And they'll say], 'That didn't go out for bid.' It's pretty easy to find out things like that. [And] I haven't known [these jobs] to go to a minority.

Another minority business person stated that some of the larger facilities projects that he observes in progress have either not gone out to bid or have been let through selective bid processes. He attributes his disadvantage in certain projects to exclusion from the prevailing contracting network:

No, I would not say [bid notification] is automatic because I know that there's a lot of [State] work that's being done, even for State facilities in my area, that I don't know anything about how it occurred. I didn't see any announcement about the project, so obviously we weren't on the list. We didn't receive notification . . .

[How this happens] is the projects customarily have been already discussed with certain consultants that have access to department people, you know, staff people at the State offices, as well as maybe legislators who are pushing certain projects. We don't have that access to them. We don't wine and dine them or are unable to interface with them on a personal level that other companies obviously have the ability to do.

Other MBE/WBEs stated that, despite their efforts to obtain appropriate and timely bid notices, they often only receive notice of projects that are not in their field. One architect states that he continually gets notice of furniture refinishing jobs although he does not do that kind of work. Another MBE/WBE in the construction field stated that he continually receives notices for paving jobs when he does not provide that service. This individual recommended that the State make better bid information available to minority and woman businesses to further their commitment to the MBE/WBE programs:

I think the State should do a better job of supplying some better information to . . . DBE firms. You know, more targeted. In other words . . . I get Highway Department information for paving jobs, I don't do paving . . . I think the State, if they're going to have programs [for DBEs], they really need to do better follow-up on the program. I get the feeling it's a lot of lip service.

One minority contractor stated that she has a full-time staff person concentrating on applying for government MBE/WBE program bids, especially the State of Missouri. And yet, she explained, after a full year of effort, her company has only won one State contract.

Other M/WBEs stated that on State jobs they sometimes encounter prime contractors who attempt to circumvent the "good faith effort" requirement. Most often these evasive tactics involve notifying MBE/WBE subcontractors of bidding opportunities too late; although the MBE/WBEs have been officially notified, they do not have adequate time to provide a proper bid. One man stated:

I've been asked . . . to bid on jobs, and get the specs three days or a week before the job is let. So that tells you something. What they're doing there is saying that [I] didn't bid on it. You don't have time to prepare a decent bid on a decent project in a week or two weeks. So . . . all these projects that should include minority contractors, they suddenly disappear because [the prime contractors] 'can't find' us.

Good Old Boy's Network

As stated in the previous section, many MBE/WBEs attribute their exclusion from State bidding opportunities to a pre-existing network of established businesses, commonly referred to as the "good old boy's network."

One female business owner explained the fact that her husband had to market her company's services to certain State departments because he was accepted into the State contracting network where she was not:

I got [State business] through my husband. Basically, he would go out and network in different organizations that he was involved in – typically the Rotary Club – and made connections with some men that work in the State environment and sold my services I still do find – especially with the males in the State environment – that they tend to hear things [better] from a male. I was even told in a [State workshop by the men in my classes] that all they ever have is women [teachers] and that they would prefer to have men [teachers] I just told them that a male [teacher] wouldn't tell them anything different than I was telling them. Typically, I am very well accepted by men. In the private sector, I am very well accepted by men when I am doing my [workshops]. It was interesting that [in] that particular class [the men had trouble with me being a woman].

Other women business owners reported difficulties in dealing with men on State projects, claiming that often, as women, they are treated unfairly. One woman reported that when she went to pick up a check from a prime contractor on a job site, he would not give her the check until she brought a male employee with her. In fact, he sexually harassed her when they were alone:

A particular [incident] was . . . working up in North Missouri and I went out to the job site and went into the trailer because [the prime contractor] was supposed to write me a check so I could pay the truck drivers and he kind of held the check up and said, 'Well, what are you going to do for it?' I walked out of there and got my head truck person and he went in there with me, and we got the check.

Other MBE/WBEs report that they are often excluded from State work because the long-established firms are selected over and over again. The result for MBE/WBEs is that they are unable to, in turn, establish themselves and prove their capabilities. One woman stated that it is this "good old boy's network" that keeps many of the firms run by minorities and women out of State contracting opportunities:

In the State of Missouri I don't think DBEs and WBEs have a level playing field. I mean . . . it's preferred just to give the contracts to the people that already have the contracts . . . People who have had a contract for several years, you know, [the State] already has a comfort factor with them and just to give [a job] to the same firm again is a very easy thing for them to do and that's just human nature. Change is uncomfortable for everybody . . . They're usually new firms, you know, they're run by minorities or women, I mean the comfort level might not be there that [State employees] have experienced in that old boy's network.

Another minority contractor stated:

I think that the State should be . . . flexible on the bidding procedures. [T]he State sends out bids to several companies . . . I think what they do sometimes – this is my feeling – that they have an old buddy system, that they . . . are used to dealing with one particular person . . . instead of kind of expanding out and [trying] some other sources.

A minority business person in highway construction stated that there have been incidents where the “good old boy's network” has prevailed in obtaining large contracts. One example she noted was the highway construction required after the 1993 floods. Although federal funds were involved in this work and, therefore, DBE inclusion is mandated, the State did not set up a program and the usual majority firms received the work through sole source bids:

[I]n July of 1993 Missouri experienced a flood that resulted in the damage and destruction of bridges and highways . . . [The] Missouri State Highway Department had an emergency meeting scheduled with the highway contractors in July in Jefferson City to discuss the repair work to be done on an emergency basis and how they intended to solicit contracts. The question was brought up to [the] #3 man in the State Highway Department at that time: how did they intend to subcontract and did they intend with the use of the Federal Funds to initiate a DBE requirement? [His] response was the DBEs cost the State too much money and they were too pressed for time to bother with finding DBE subcontractors or primes. Further, all of these contracts were [let] on the basis of the good old boy network, with the resident engineers in the district deciding who should perform the work and calling and negotiating prices with those contractors.

One WBE stated that she has reduced the number of State bids she submits because “. . . you never see anybody new winning [contract awards].” Another MBE/WBE business person stated that he never receives bid notices from the Highway

Department and presumes it is because they have already selected firms from their closed network: "... obviously there is some kind of network and they've probably got some contractors that they work with most of the time. Some new person they are probably not willing to work with."

One Hispanic businessman explained that on certain State construction projects there have been no MBE/WBE goals at all:

The State of Missouri has been one of the most difficult public agencies for Hispanic and minorities to conduct business [with]. Primarily there has not been a strong commitment from the top on down. The State process for inclusion of minority and women in the system is flawed Case in point: recently [a large State construction project had] no goals assigned to it for minorities or women. That was reported by fax and I can provide you that information.

A minority businessman stated that, although his firm has won subcontracts on State Highway projects, it has only been on those projects with federal funding. On projects with only State funds, he has never received a contract. His conclusion is that the State Highway Department is not enforcing MBE/WBE goals for its own contracts, whereas the federal programs are.

Other MBE/WBE contractors feel the presence of the "good old boy's network" when they are in the process of bidding or even after the contract has been awarded. One minority owner of a trucking company stated that a large majority prime forced her to lower her price after a job was in progress. The prime contractor did this by shopping the minority company's bid to other majority subcontractors and using the majority's lower price as pressure for the original bid to be lowered. The minority did not receive any monitoring or support from the State:

They shopped our bid against [a majority subcontractor] and told us that after we completed our minority [bid on the contract] that they found somebody to do our work lower and that if we didn't come and meet their prices . . . they were going to give the rest of the trucking to [this majority sub] They can tell you after you fulfill your minority part [of the bid process], 'Hey, we've got this other trucking company,' and they will use them [T]he reason they gave was the fact that we had to bring our prices down to this majority company or that we would be kicked off the job.

Other MBE/WBE business owners stated that, although they have proof from the bid records that they submitted lower bids than other companies, they were still not awarded State contracts. One man stated:

My biggest problem with the State is regardless of what I have bid on with them in the last three years, there's absolutely no awards. I don't care what price I give. I have given them, just to see if or what would happen with the bid, I have marked bids up five percent – we still lost [the job]. And I know for a fact there is no way that they could buy that product [for less]. As a matter of fact I have gone back and looked at the price that they paid for it and it's higher than what I bid.

Another minority contractor in the construction field stated that he has concrete proof of bid tampering on State Highway Department contracts. After working closely with the prime contractor who ended up winning the contract, this minority sub was informed that he was not the lowest bidder; another subcontractor had beat them by two hundred dollars on an approximately two hundred thousand dollar bid. When this minority went to look at the published bid tags, he found that his bid had been used, item for item and penny for penny. Clearly, the prime contractor had selected a preferred sub regardless of actual bids.

Another MBE/WBE contractor described a situation, again with the State Highway Department, in which she won a contract through low bid. However, after the contract award, this MBE/WBE was investigated, ostensibly on the basis of being new to the area, and was determined to be unfit to handle the job. After a long and expensive court battle this contractor won the case and had the investigation overturned. As this minority states, she believes the investigation was started by a competitor in her field:

I had bid a job that involved about two and a quarter million dollars, and [the Highway Department] raised the question that I was barely new in the area. I was just barely listed with the Highway Department and all of a sudden I get a job that big – how can I be able to afford equipment, manpower and all that? So, that's what they based the audit on They lived with me for a couple of days and [they determined] I didn't have enough collateral, enough capital, enough coverage for that size of a job. So therefore they dropped me off the list and they granted the job to the next lowest bidder and I always had the thought that somebody had called them and said something, somebody had started that experience.

One African American businessman stated that, after he had been awarded a contract to supply materials to a particular State agency, he placed his order, received the materials in his warehouse and only later found out that the State had reissued the bid for this product and purchased it from someone else. Although he complained to the State, nothing has been done and he still has the product in his warehouse:

I had a contract . . . [with] a State agency We were awarded a contract. I bought the product for a year, put it in my warehouse; we never got our order. Then they turned around and reissued the solicitation for the same product that I had sitting in my warehouse that they were supposed to be buying. So we called them and asked them why would they issue a contract on something that we had the contract on that they never bought before [They said] That they would investigate it. Nothing happened. I've still got the product.

Another minority contractor stated that he was excluded from a State contract that he had won through low bid because the general contractor realized how much profit he was going to make on the bid. The general contractor ripped up the contract in front of this minority subcontractor and stated, "No way I'm going to let you make a \$30,000 profit. I'll crawl on my hands and knees and let you kick me for \$30,000." And, although this minority protested to the State, he was informed that if the general contractor could find another minority who would do the job for less, he was free to do so. In the end, this promotes bid shopping among MBE/WBEs and the continued existence of a "good old boy's network" on State contracts.

One minority businessman who was the second lowest bidder on a State project was told by a State official that he had communication problems. This man explained that he had been criticized for failing to go beyond the stated scope of work and ingratiate himself with prime contractors. He stated:

[I]f you give me a work scope, I'm going to follow that work scope. I'm not going to wash your coffee cups, and I'm not going to do little things over and above that contract because this is the way we started out I'm not going to do you [any] favors. I'm not going to give you [any] ham for Christmas, and I'm not going to give you a case of whiskey. So all of these things make me the wrong kind of guy to deal with, but [I] just don't do things that way.

Another way in which MBE/WBE contractors experience the "good old boy's network" on State jobs is through competition from "front" companies, those companies that are not minority or woman-owned but claim to be. As we saw in an earlier section of this report, it is often large majority prime contractors that set up front companies, so that they can control their minority contracts. One MBE/WBE explained:

A lot [of fronts] are on state projects. Anytime [prime contractors] have got to have somebody in order to produce a MBE goal, especially on Federal projects or sometimes State projects, this is always going on. I mean, you can just about go to any project and I

can point it out. I can take you to almost any State Highway project and I can point a fake minority out to you.

Another contractor who also works on State Highway projects stated that he also encounters many front companies on Highway projects:

The [State Agency] that does have an active program is the Highway and Transportation Department and it's a DBE as opposed to MBE [program]. There's a lot of, you know, wives sitting at home who are the presidents of these companies that their husbands are running and they qualify as DBE's, so . . . I would venture to say that seventy-five to eighty percent of the DBE work in the State of Missouri goes to woman-owned businesses who in turn are white male-owned businesses.

Late Payment

The issue of late payment also jeopardizes the success of minority and women business owners on State of Missouri contracts. Many MBE/WBEs interviewed in this study explained that they are often paid late on State contracts. MBE/WBE subcontractors have little information on their payment status when they are dependent on prime contractors for information. Additionally, minority and woman-owned businesses are often more seriously jeopardized by late payment than are majority firms because of the barriers they experience in obtaining financing and credit assistance. Late payment by the State can seriously threaten the existence of M/WBE companies.

One MBE/WBE business person stated that several State departments have fallen two months behind in payments. Not only has this MBE/WBE had to expend time in attempting to collect payment, but she must also borrow money from a lending institution at high interest rates to carry her receivables:

Well, [late payment] has happened with State of Missouri. At different times we have had to call and they would get as much as two months behind . . . you're supposed to get [a check] each month . . . and sometimes it didn't happen or they'd say the invoice was misplaced or something like that . . . [Then] we would have to borrow money from Great Southern and it was always pretty high, like fifteen percent . . .

Another MBE/WBE contractor who also experiences two-month delays in State payments explained that he could only survive by not paying his subcontractors until the State paid him. Having gone into State contracting knowing that late payment was a problem, this contractor set up a system in advance to deal with the problem:

The State is always late [in paying]. Again, I went into the business anticipating the State being late in payments. I had the good fortune in working with one of my oldest brothers . . . so one of the things that we did early was we paid our [subcontractors] when we got paid. And we anticipate a two-month delay. And with people understanding that there might be a two-month delay in the money that they're getting for the work that they've done, they know that up front and it's not a problem dealing with it.

Other MBE/WBEs do not find it so easy to deal with the State's slow payments. One contractor explained that recently the State was two weeks behind their normal payment schedule to him, and it really caused problems because he had been unable to obtain a credit line to cover such situations. After his CPA interceded and talked with the department's fiscal officer, it was discovered that the check had been "kicked out" of the system and was lost. This officer had to find it and walk it through the system. This minority business person stated that, due to such situations, the future of his new business may be jeopardized by the State's payment procedures:

I just don't know whether a person like myself, just starting out, can really be truly successful [in business] without having a substantial cash flow in place. I just don't see how you can. Not with the way the State is set up to invoice and reimburse.

One minority businessman who has worked in the construction industry for over ten years stated that, on a State of Missouri contract, a general contractor was extremely overdue in paying. When this man inquired as to why, the reason given was that the State had not yet paid. And yet, when he called the State, this minority businessman found that the general had received the check long ago:

There was one particular contractor that we worked for, he said he hadn't got paid, he hadn't got paid, hadn't got paid. So I confronted the State of Missouri on it and they said that he had got paid for a particular project, and I confronted the contractor I was working for and said, 'Well, the State says you've been paid.' And he got real huffy and all up in arms and he said that we would probably never work for them again . . . because we had basically caught them in a lie. [This kind of thing] has been very detrimental to [my company] when they don't pay, because I've got to go out and get loans to . . . keep the insurance and the fuel and the parts going, and because the type of work we do is very high-maintenance it puts me in quite a bind. And if I'm late on a payment or if I'm late on a fuel bill, you know, they attach one-half percent or the highest interest rate onto their invoice, but yet I can't do that to my invoices to these primes

and these sub-contractors. I have to eat all that, which really cuts into your profit.

One minority who works as a subcontractor for general contractors stated that the State needs to take a new look at how it fails to monitor the timely payments between generals and subs:

Because [with] the State of Missouri, if they pay their generals there is no guarantee that they are going to make their generals pay their subs. They need to address that. Either [through] withholding payment until he has paid his subs See, what happens is that [the general] will put in a pay estimate and the State of Missouri pays them, but [the State] doesn't get anything back from the general saying [that the sub has been paid] [There is something] called the 'Pay Act.' But there are no fines for it. It just says you have to pay [subs] within thirty days. By the time you hire a lawyer to try and go after [your payment], you've lost whatever . . . you've already gone to the bank and you are paying interest on that money that they owe you and that's why they do it – so they don't have to go to the bank. They can hold your money and use your money to pay all of their suppliers and stuff.

Finally, One Hispanic businessman suggested a possible solution to the problem that late payment poses to many MBE/WBEs in the State of Missouri:

Put in place and enforce a prompt payment policy. If the . . . [prime contractor] or the State fail to pay promptly, then the funds should go to a third party disbursement group paid for by the party at fault.

VII. CONCLUSION

The evidence gathered in these interviews strongly indicates that significant barriers exist that preclude minority and woman business owners from gaining equal access to contracting opportunities within the State of Missouri. These barriers exist at many levels within the marketplace, from financial institutions, professional associations and unions, majority colleagues and co-workers, government agencies, and finally, the State of Missouri itself.

As the anecdotal evidence in this study demonstrates, barriers encountered by minority and women business owners in the financial arena greatly affect the development of their businesses. The refusal of many financial institutions to fund MBE/WBE businesses is often

the result of stereotyping or prejudice – a mistrust of the capabilities of minorities and women. This is evidenced by the banks that require a husband's signature on his wife's business loan, although he is not involved in the business. It is also evidenced by the disparate treatment that many minorities and women receive at financial institutions, as compared to their majority colleagues. It is also confirmed by those majority business people within financial institutions who have given MBE/WBEs the real and honest reasons for their loan or credit denials – prejudice, stereotyping and mistrust.

The effect of undercapitalization on MBE/WBEs is severe. It prevents them from investing in the materials required for business growth and development, makes it difficult if not impossible to stay afloat during times of cash flow problems resulting from late payment, causes hardships in securing bonding and insurance, creates difficulties in obtaining credit lines from suppliers, along with other myriad problems. In summary, undercapitalization from lack of access to loans and credit seriously jeopardizes the development and life expectancy of MBE/WBE businesses.

In addition to the barriers encountered in the financial arena, minority and women business owners face a number of barriers in their professional fields. Racism and sexism among their peers often results in either the loss of contract opportunities or undue difficulties during the execution of a job. The prejudice resulting from racist or sexist attitudes can exhibit itself at any point during the work process, including bidding procedures, job interviews, on the job site, and during the payment process. Harassment and retaliation are not uncommon experiences for MBE/WBEs.

The exclusion that many minorities and women experience as a result of racial or sexual prejudice often takes place in the professional network in their field. They may be unable to obtain the paperwork to join a union or association, may be excluded from social events or networking opportunities, or denied access to positions of power or authority within their industry. The existence of an established network of majority companies within a given field, a network that will not make room for new minority and woman-owned companies, is a common barrier for MBE/WBEs.

Despite the existence of MBE/WBE programs designed to assist minorities and women in gaining greater contracting opportunities within the work place, substantial barriers exist within those programs. Prime contractors repeatedly find ways to circumvent the MBE/WBE requirements, including late notice of bid opportunities, bid shopping, manipulation of the scope of work which results in less contract dollars for the MBE/WBE, the creation of front companies to which they pass their subcontracts, and late payment of subcontract monies owed. In addition, agencies often pose barriers to MBE/WBEs successfully obtaining or completing contracts. Agency created barriers can include insufficient notice of bid opportunities, excessive certification procedures and the existence of a "good old boy's network" within the agency that caters to majority firms.

Finally, MBE/WBEs also encounter barriers within State of Missouri programs. The State's certification procedures have posed undue hardships on many MBE/WBEs, requiring excessive hours for the paperwork, sometimes requiring the services of an attorney, and often taking months to years to accomplish. In addition, many MBE/WBEs find that notification of State bidding opportunities is often difficult to obtain. Many attribute this to an existing network of State employees and majority contractors which controls the contracting opportunities and ensures that majority firms receive the maximum contracts possible. And the last major barrier reported by minorities and women in attempting to contract with the State is late payment of invoices either by prime contractors or the State itself. As mentioned in the section on financial barriers, the State's failure to ensure timely payment to minorities and women exacerbates the problem of undercapitalization that many experience.

In conclusion, the barriers encountered by minorities and women in these interviews include both race-based and race-neutral issues. Therefore, the recommendations put forward in this report are narrowly tailored to address both the race-based and race-neutral barriers identified in the anecdotal component of this study. Key Barriers are summarized in the table below.

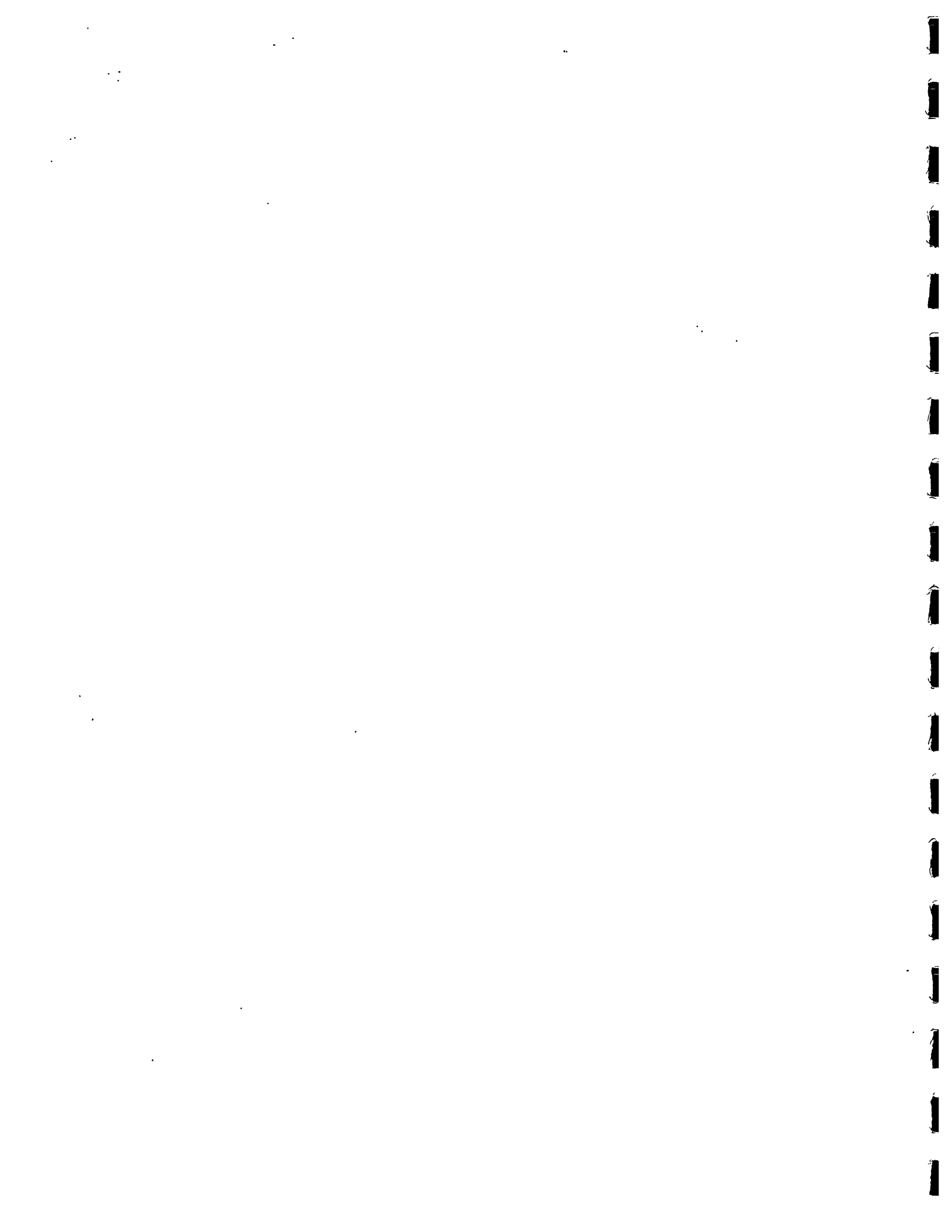
Table 5.1 Summary of Anecdotal Findings

Type of Evidence Local and State Agencies*	African American	Asian	Hispanic	Native American	Caucasian Women
Experienced difficulty in obtaining financing and/or credit to develop or sustain their businesses.	Yes	Yes	Yes	Yes	Yes
Experienced late payment of invoices by agencies and prime contractors leading to possible jeopardy of credit and difficulty in obtaining loans.	Yes		Yes*		Yes
Experienced difficulty in obtaining financial assistance from suppliers, bonding companies and insurance agencies.	Yes	Yes			Yes
Experienced racial or gender discrimination in the professional network.	Yes	Yes	Yes	Yes	Yes
Felt pressure to conceal or disguise the fact of minority or female ownership in order to fare better in sales and marketing efforts.	Yes				Yes
Perceived themselves to be held to a higher standard or review than their majority peers.	Yes	Yes		Yes	Yes
Experienced physical or sexual harassment, intimidation, or ostracism during the course of running their business.	Yes		Yes	Yes	Yes
Experienced difficulty breaking into a contracting network or any network that provided equal access to business opportunities or aids in business development. (Example: Good Old Boy's Network)	Yes	Yes	Yes		Yes*

**Table 5.1 Summary of Anecdotal Findings
(continued)**

Type of Evidence Local and State Agencies*	African American	Asian	Hispanic	Native American	Caucasian Women
Experienced discrimination in their relationships with unions.					Yes
Experienced difficulty in obtaining bid information.	Yes	Yes			Yes
Experienced difficulties with prime contractors circumventing the good faith requirements of the MBE/WBE programs.	Yes				Yes
Lost possible business opportunities as a result of bid shopping.	Yes				
Awarded a contract and denied the work or payment under that contract despite being the low bidder.	Yes	Yes			
Experienced a reduction of work or cancellation of a contract.	Yes				Yes
Experienced pressure to be a front company or lost contracts to companies that are front companies.	Yes				
Experienced barriers to obtaining or successfully completing contract work due to public agency or State agency staff.	Yes		Yes*		
Experienced difficulty in obtaining certification and recertification for their firms. (Certification difficulties include excessive paperwork requirements).	Yes	Yes	Yes*		

*Indicates State as well as local agency discrimination



Part Six

METHODS FOR REMEDYING DISCRIMINATION

I. OVERVIEW

Methods that attempt to afford all contractors an equal opportunity to participate on state, federal and local agency contracts can be grouped into two general categories: race neutral and race conscious. As discussed in Part Two of this Report, the State of Missouri has employed both types of techniques.

The State's current MBE/WBE minority business development programs contain many race neutral elements that could address the barriers to contracting that are experienced by, and have led to under utilization of, MBE/WBEs in the State's market area. Specifically, the current programs include good faith effort requirements, such as directories listing MBE/WBEs, and other outreach mechanisms. While the race-neutral elements are hallmarks of a potentially effective program to provide equal opportunity to all businesses and equitable participation by minority- and women-owned businesses, these elements, used together with race conscious techniques, have not remedied the discrimination experienced by MBE/WBE contractors.

Where disparate treatment exists due to a business owner's race or gender, race or gender-neutral measures alone are not sufficient. There are three primary race and gender-conscious methods for reducing barriers to MBE/WBE participation: mandatory utilization levels, participation goals, and preferences. A comprehensive utilization plan may incorporate components that reflect all of these methods.

Outlined below are specific recommendations for changes to the State's existing MBE/WBE programs, which are intended both to strengthen existing program elements and to add new elements. It is not within the scope of this report to address the implementation of the recommendations set forth in this section. These recommendations are intended, rather, to be used as a basis for the development of implementation procedures once the State adopts the recommendations as part of, and incorporates them into, the existing program.

II. RACE AND GENDER NEUTRAL METHODS

Race- and gender-neutral measures ensuring full equal opportunity to MBE/WBEs in contracting have been considered. *Croson* and its progeny specifically dictate that an entity must consider the efficacy of race-neutral methods before adopting race- or gender-conscious programs.

Race-neutral programs help small businesses, new businesses and other disadvantaged businesses, without using race or gender preferences to alleviate the disparate impact on their formation and development. To be effective, race- and gender-neutral methods should address the specific barriers MBE/WBEs and other businesses experience. For instance, MBE/WBEs' lack of information about bid opportunities, late notice of contract opportunities, difficulty obtaining financing and late payment by the State, all potentially can be addressed through race- and gender-neutral methods.

RACE-NEUTRAL PROGRAM RECOMMENDATIONS

1. Expand outreach efforts made to small MBE/WBEs.

Because MBE/WBEs report being excluded from contracting networks, the State should make a concerted effort to inform MBE/WBEs of all contracting opportunities. Although the State has procedures to publicize contracting opportunities, outreach procedures may be expanded to incorporate all identified MBE/WBEs in order to achieve a race-neutral solution to the bid notification problem experienced by MBE/WBEs.

- a. Vendor Business Database: The vendor database of qualified firms that operate in the relevant market area should be updated regularly. In addition to company name, address, and types of work the business is capable of performing, ethnicity and gender should be noted.
- b. Targeted Mailings of Bid Notifications: All departments should participate in the targeted mailings. Bid notifications should be distributed to firms in the State's database, whenever price quotations and subcontracts are solicited.
- c. Contracting Opportunities Newsletter: The State could publish a monthly or bi-monthly contracts register similar to the U.S. Department of Commerce's "Commerce Business Daily" to target

contractors and provide information on upcoming contracting opportunities, including a description of the planned project, bid opening dates, anticipated duration of the project, and notification of MBE/WBE goals. There could be a requirement that all contracts over \$5,000 dollars be advertised in the contracts register. This document could be distributed on a subscription basis.

- d. Electronic Bulletin Board: Contract information can also be distributed by a computerized information system accessible from remote locations by modem. This system could allow business owners to file questions for a computerized or electronic, mailed, or telephoned response. The State could negotiate with local small business organizations, libraries, or other public entities to offer online access to small businesses without computer technology.
- e. Hotline: A 800 telephone hotline can be established so businesses can call in and get immediate bid and prebid information; order copies of bid specifications/plans; and get general business assistance.
- f. Technical Assistance: Technical assistance should be provided to small business enterprises, in certain highly specialized areas. The State could expand upon its technical assistance program by determining new product or service areas where small business participation could be obtained. Then technical assistance could be provided to owners of small businesses who are attempting to expand into those markets.

2. Employ payment procedures which ensure that subcontractors are paid in a timely manner.

Habitually Delinquent Contractors: The State could identify contractors who habitually make late payments to subcontractors and employ alternate methods of payment such as issuance of joint checks or means to reprimand such as monetary penalties.

3. Implement a financial assistance program.

- a. Loan Guarantee Program: If a contractor meets specific criteria relating to size and income the State could guarantee a percentage of a loan to the firm.
- b. Database of Assistance Programs: A database of State and federal assistance programs that includes the criteria for participation and how to attain more information on the programs should be developed.

4. Bonding Assistance.

The State should consider methods to lower its bonding limits since a number of MBE/WBEs report that these are a significant barrier to contracting. The State could raise the threshold at which a bond is required. Other methods that may be used include reducing the size of contracts into smaller units or segmenting a large contract so that once a portion of the work is completed, the bond can be rolled over into the next portion.

III. RACE-CONSCIOUS METHODS

RACE-CONSCIOUS PROGRAM RECOMMENDATIONS

- 1. Consider if race- or gender-neutral measures can be utilized to address barriers faced by MBE/WBEs.**

The statistical analysis of the ratio between the current MBE/WBE utilization and current MBE/WBE availability in the State's market area reveals significant statistical disparities with respect to construction, design consultant contracts, and contracts and purchase orders. The oral history analysis includes repeated instances of discriminatory treatment.

Where disparate treatment exists because of a business owner's race or sex, race- or gender-neutral measures alone are not sufficient. There is no race- or gender-neutral measure for ensuring that majority prime contractors cease discriminating by refusing to hire MBE/WBE subcontractors, or for offsetting higher costs incurred by MBE/WBEs as a result of disparate treatment by contracting officers, suppliers, and banks.

- 2. Develop model for setting realistic and legally defensible goals.** The model must effectively measure MBE/WBE availability and capacity in realistic and non-discriminatory terms.
 - a. Adjust coverage of the program to incorporate all contracting opportunities.** Any program ultimately adopted by the State should apply to all aspects of contracting (e.g., construction, design consulting, and contracts and purchase orders) and to all agreements involving the expenditure of State funds.

- b. Adjust goals to reflect current availability. To the extent that race- and gender-conscious remedies are currently implemented by the State in the form of goals, they should continue. However, overall goals, for both MBEs and WBEs, should be adjusted in accordance with the availability information provided as part of this report. Project specific goals that reflect the availability of MBE/WBEs to participate on a specific project should be considered.
- c. Institute bid preference more widely. The State should consider implementing bid preferences for MBE/WBE contractors and for all contractors exceeding the State's race- and gender-conscious goals. The lottery has a bid preference but the State's other agencies do not. Bid preferences have the advantage of reducing the disadvantages encountered by MBE/WBEs without excluding any potential contractor. They encourage competition and ensure that the State will engage responsible contractors.

3. **Design and implement a centralized certification and verification process for MBE/WBE firms.**

A number of MBE/WBEs reported experiencing difficulties with front companies, that is, companies who claim to be owned and controlled by a minority or a woman but are not. However, others reported that the certification process was excessively complicated and some were required to hire attorneys to defend minority status. Therefore, it is necessary to make the certification process more effective and while simultaneously making it more efficient. The following recommendations for certification are made with these needs in mind:

- a. One-Stop Certification: Certification in the State is not centralized. Business owners report that the paperwork is excessive for applying for certification to the various governmental entities in the State. A single agency should be designated as the certifying agent and local agencies should be authorized to use the service to certify companies who apply. All State departments and local agencies could accept certification by this State agency.

Alternatively, the State could grant automatic reciprocity for businesses certified as MBE/WBEs with local government and agencies that comply with the standard set forth in Federal Regulation 49 CFR, Part 23. Verification of firms which have not met the standards of proof set forth in 49 CFR 23 could include site investigation.

Additionally, the State should consider combining the vendor registration and the certification applications so that minority- or woman-owned vendors that want to be certified would need to submit only one application.

- b. Standard: Proof of ownership and control by MBE/WBE principals, owners, or partners should be required in order for a firm to be certified as an MBE/WBE.
- c. Verification: The State should require verification of MBE/WBE ownership with site visits and/or interviews in addition to the procedures already used which include affidavits and supporting documentation (i.e., county/state records, corporate bylaws, etc.).
- d. Recertification: A streamlined recertification procedure should be designed and implemented to ensure State records accurately reflect the firm's status while minimizing the burden recertification imposes on MBE/WBE firms. Require recertification on a bi-annual basis with self-affirming verification by application and affidavit, and site visits or interviews.
- e. Penalties: A contractor that falsely represents to an agency or to a contractor that it is a certified MBE/WBE should be in breach of contract. If the State determined that a breach occurred, all payments under the contract could be immediately suspended. The contractor could show that it attempted to comply with the terms of the contract relating to MBE/WBEs but was unable to comply.

If the State determined that the contractor did not act in good faith, all amounts paid to the contractor intended for the MBE/WBE could be forfeited. The contract could be rescinded, in which case the State would return all goods received and recover all amounts paid under the contract. In the alternative, the State could penalize the contractor up to 10% of the value of the contract.

Contractors making false representations could also be disqualified from bidding on contracts for up to 36 months after the State determined that the contractor made the false representation.

- f. MBE/WBE Database: The State should continue to develop and maintain a database of qualified MBE/WBE firms that operate in the relevant market area. The database should be constructed to include company names, addresses, types of work the business is capable of

performing, and specific ethnicity and gender of the primary business owner.

4. Monitor and record *actual* utilization to ensure that program requirements are respected.

Many contractors noted that bid shopping and reduction in scope of work after contract award was a problem. To address this, the State should require that prime contractors specify all MBE/WBEs that are to be used on the contract at the time bids or proposals are opened along with a dollar value for the contract and specific items of work to be performed by the MBE/WBE subcontractor.

The State should also carefully monitor utilization of MBE/WBEs to ensure that those listed on the bid documents are actually used to perform the tasks listed in the bid.

- a. Verification: Many contractors reported not being awarded a contract despite being listed by the prime contractor. Therefore, the State must develop a system to track and monitor all modifications of the contract after the award. The system must also verify that records accurately reflect and distinguish variations in proposed utilization and actual utilization by contractor.

Prime contractors should be required to report all payments to each MBE/WBE with each invoice they submit. The State would provide progress payments only after the prime has provided the information. A separate form can be developed for this reporting which could then be forwarded to the state agency monitoring utilization.

Participation should also be verified with the MBE/WBEs throughout the life of a contract, or for a short contract, at its conclusion. Such verification can take place through contacting MBE/WBEs by mail or telephone and requesting that they report their payments to date.

- b. Quarterly Reports: The State should generate quarterly reports of overall (MBE/WBE and non-MBE/WBE) utilization by the State through an automated computer system with the capability to sort data by type of contract, minority group, gender and firm name. A standardized reporting form should be used by each reporting contractor that mirrors the database used by the agency.

- (1) MBE/WBE program requirements (e.g., goals) should apply to all change orders and amendments to the contract by the prime contractor on all contracts.
- (2) Information about all contracts to be awarded that are valued over a certain amount should be sent to the Equal Opportunity Office or another central office so that contractors will know where to obtain information. Include all bid information, all MBE/WBE program requirements (e.g. goals) including those that apply to all change orders, amendments, and other modifications to the contract by the prime contractor on all contracts, not just construction contracts.

- c. Penalties: A contractor that falsely represents that it will use the services or commodities of a MBE/WBE but does not, should be in breach of contract. When the State determines that a breach has occurred, payments under the contract could be immediately suspended. The contractor could show that it attempted to comply with the terms of the contract relating to MBE/WBE participation, but was unable to do so.

If the State determines that the contractor did not act in good faith, all amounts paid to the contractor intended for expenditure with the MBE/WBE should be forfeited. The contract could also be rescinded in which case the State may return all goods received and recover all amounts paid under the contract. In the alternative, the State could penalize the contractor up to 10% of the value of the contract.

Contractors making false representations could also be disqualified from bidding on contracts for up to 36 months after the State determined that the contractor made the false representation.

- d. Complaints The State should develop a more efficient and centralized system for handling complaints. Copies of complaints should be routinely sent to the Department of Economic Development so that it can keep a record of them. Records of verbal complaints should also be maintained, and these should include the method by which the complaint was resolved.

5. Employ program compliance and enforcement procedures which are sensitive to potential difficulties associated with compliance yet deter circumvention of the program's objective and requirements.

- a. Good Faith Waivers: The State should continue to provide good faith waivers to prime contractors who demonstrate a good faith effort, but fail to comply with MBE/WBE goals/preferences.
- b. Good Faith Verification: Procedures designed to ensure that alleged good faith efforts are validated should be implemented. The following recommendations should assist this objective:
 - (1) Develop a strict timeframe and clear, detailed criteria to evaluate any requests for waivers to MBE/WBE goals on the basis of MBE/WBE unavailability or lack of capability.
 - (2) Require documentation of advertisements, MBE/WBE contacts, agency contacts, and other good faith efforts in every instance in order to evaluate a prime contractor's "good faith efforts." Contact MBE/WBE contractors and others to verify the information in the documentation. Determine whether the actions took place a sufficient time before bids are opened.
 - (3) Establish a "Good Faith Compliance Committee" to review decisions to award contracts.
 - a) Authorize the Committee to hold hearings and gather evidence to support its conclusions.
 - b) Empower the Committee with the authority to temporarily suspend or intervene in the contract selection process to correct contracting practices which hinder equal business opportunities for MBE/WBEs.
 - c) Make sure that the timeframe within which MBE/WBEs must be contact efforts the sufficient opportunity to assemble a bid. Many contractors reported that they were not informed of contracting opportunities with enough advanced notice to assemble a bid. Therefore, the good faith effort requirement should be that contractors notify MBE/WBE of the opportunity at least ten working days before bids or proposals are due.

- c. **Grievance Process:** Procedures should be incorporated into the bid protest provisions in the general contract specifications which address the needs and concerns of MBE/WBEs.

Equal opportunity officials should be empowered with the authority to require alternative dispute resolution to resolve contract and compliance related disputes between prime contractors and MBE/WBE subcontractors.

Compliance performance should be incorporated into the State employee performance reviews. The State should establish compliance objectives for key personnel, and record non-compliance in personnel records.

6. Empower Compliance/Affirmative Action/Equal Opportunity Unit/Officer with authority to enforce as well as monitor MBE/WBE program compliance.

The ability to enforce compliance should be concomitant with the responsibility for monitoring performance.

- a. Adequate staff and resources should be assigned to the Compliance/AA/EO unit/officer to implement MBE/WBE policy and procedures.
- b. Compliance/AA/EO staff should be involved in all phases of the State contracting process, including involvement with the assessment of how project specifications can best maximize MBE/WBE contracting opportunities, the evaluation of MBE/WBE contract or bid commitments, and contract monitoring (including random, on-site inspections).
- c. The State should adequately train all staff involved in purchasing and MBE/WBE program compliance, and the staff should be acquainted with MBE/WBE procedures.
- d. The State's effectiveness in enforcing MBE/WBE program compliance should be assessed on a periodic basis. This could be done through a review of the results from the quarterly reports, the review of actual dollars paid to MBE/WBEs, the frequency of complaints and the actions taken on them, and the results of the performance evaluations.

7. **Draft contract documents to reflect the revised MBE/WBE requirements.**

Key provisions of the MBE/WBE program should be included in the prime contracts. In addition to setting forth the goals or preferences and the requirements for demonstrating good faith efforts, prime contracts should include the conditions for the impositions of penalties, the requirements for prompt payment, and reporting of MBE/WBE utilization discussed above. In addition, prime contractors should be required to include relevant provisions in their subcontracts.

Contractors should also sign an affidavit declaring under penalty of perjury their intention to comply with the provisions of the program.

8. **Develop and implement an effective minority outreach program to expand utilization of MBE/WBE firms.**

The outreach program should be a comprehensive, consistent and uniform approach to notify MBE/WBEs of specific contracting opportunities and to inform them of the State's interest in contracting with qualified MBE/WBEs. Outreach should be tailored to contracts in a specific industry and provide information about specific upcoming contracting opportunities for the next year.

The State's current program seeks to do this, however, MBE/WBEs report not being given notice of opportunities with sufficient advance notice to bid. All types of purchases and contracting should be included in these notices.

9. **M/WBE Certification Process**

With the recent reexamination of disparity studies and the programs they support, the capacity of firms included in those studies is constantly being questioned. (See Part Three) M/WBE certification has been recognized as a means of determining capacity. In response, it is important that the State's certification process include factors that demonstrate a firm's capacity. It is critical that this review of firm capacity does not unnecessarily complicate the certification process or deter otherwise eligible firms. In addition, it is important to institute a review of capacity for non-M/WBE owned firms as well. The following recommendations articulate the details of these recommendations, their benefits, and the policies that support them.

- a. Currently, the State implements a review of company capacity through its M/WBE certification process. It is recommended that the

State continue this policy and further strengthen review with the following recommendations.

(1) Criteria can be established which review the capacity of firms to minimally perform state contracts. Those criteria should be objective and straightforward. They should be applied to each company seeking State certification. The criteria can be adjusted to support the needs of a particular agency or type of contract. Suggested criteria include:

- Contractor experience,
- Years of experience,
- Level of bonding and insurance,
- Largest size of previous contracts,
- Owner educational level, and
- State licensing and registration status.

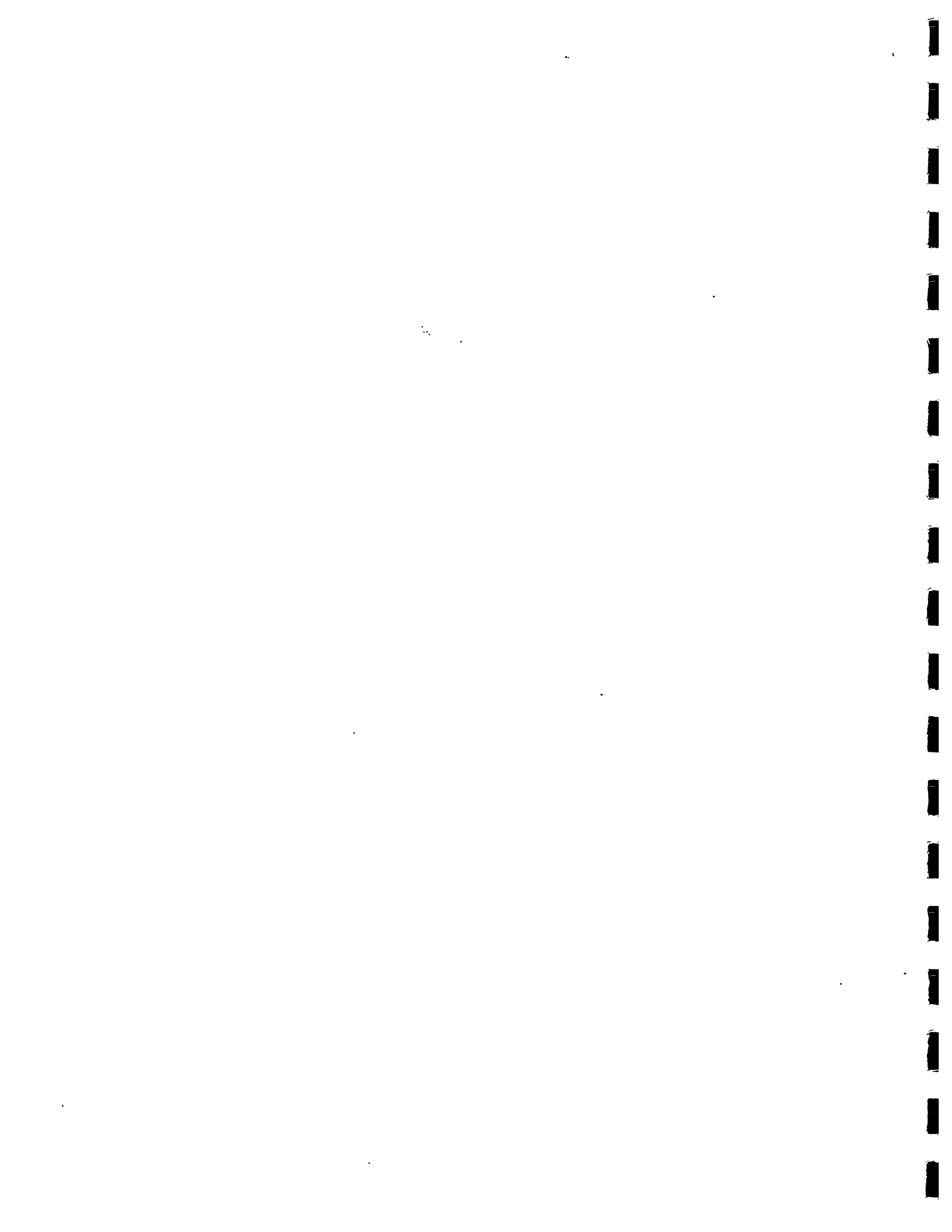
(2) The certification applicant should provide the necessary information on a form provided by the State. Applicants should also provide appropriate copies of documents demonstrating licensing, registration, equipment ownership, and references. In addition to allowing an assessment of capacity, this information will also help the State build a more detailed profile of available firms to draw upon for future contracts.

b. In order to assess the capacity of all firms seeking State contract opportunities, M/WBE or non-M/WBE, a registration program should be established. This program would serve two main goals: 1) ensure that all companies demonstrate a minimal level of capacity, and 2) create a more efficient procurement process by providing a pool of minimally qualified companies from which to solicit bids.

The contractor registration program would gather similar information as the M/WBE certification program except for proof of minority or female ownership status. All certified M/WBEs should be automatically registered in the program since their capacity is reviewed under the M/WBE certification process.

After collecting information on capacity, the State could then produce a database of registered contractors that could be sent procurement and contracting opportunity information. In addition, the State would be able to more closely monitor and assess the availability of firms in its market area.

APPENDIX A
List of Availability Directories



Missouri Disparity Study

LIST OF AVAILABILITY DIRECTORIES

1. The Alliance of Women's Organizations, Inc. 1993-1994 Directory.
2. The Associated General Contractors of Missouri, Inc. Directory and Buyers Guide, 1994.
3. Bi-State Development Agency Disadvantaged/Minority Business Enterprise Registry, 1991.
4. Bootheel Regional Planning and Economic Development Commission M/WBE list, March 1995.
5. Columbia Chamber of Commerce, 1994-95 Membership Directory.
6. Computerized Listing of Kansas City M/WBEs and Majority Firms.
7. Disadvantaged / Minority Women Business Enterprise Directory, 1995.
8. The Frederick Douglass Coalition's Black Business Directory.
9. Hispanic Chamber of Commerce of Greater Kansas City, Membership List. November 8, 1994.
10. Hispanic Chamber of Commerce of Metropolitan St. Louis, Membership Directory, 1994.
11. Jefferson City Chamber of Commerce, 1994 Membership Directory.
12. Jefferson City, Directory by Telecom.
13. Jefferson City Purchasing Division List of Public Works Projects, 1995.
14. Kansas City Black Pages, 1994.
15. Kansas City Chamber of Commerce.
16. Kansas City Human Relations Department Minority & Women's Business Enterprise Directory, March 1995.
17. Kansas City Minority Supplier Development Council Directory, 1994.

18. Kansas City Public Works List, 1995.
19. La Lista Latina-Kansas City Hispanic Business Directory, 1993-94.
20. Missouri Highway and Transportation Department, Disadvantaged Business Enterprise Program Directory, October 1994.
21. Missouri Minority Business Enterprise Directory, 1993-94.
22. MOKAN St. Louis Construction Contractors Assistance Center, Membership List. March 3, 1991.
23. National Association of Women in Construction, The Greater Kansas City, MO Chapter. February, 1995.
24. St. Louis Black Pages, 1994.
25. St. Louis Commerce, Regional Commerce and Growth Association, April 1995.
26. The St. Louis Development Corporation Directory of Minority- and Women-Owned Business Enterprises, 1994.
27. St. Louis Minority Supplier Development Council Directory, 1994.
28. Southwestern Bell, Greater St. Louis Yellow Pages, 1994. (For minorities and non-minorities)
29. Southwestern Bell, Springfield-Branson Area. April, 1995. (For minorities and non-minorities)
30. The State of Missouri, 1994-95 Telephone Directory.
31. Women's Yellow Pages of Greater St. Louis, 1994 and 1995.

APPENDIX B
Tables of Bid Samples

BID EXAMPLES

Office of Administration, Division of Purchasing & Management

Contract Type	Bid Number	Bidders	Selection Criteria	Possible Points	Firm	Points Received	Contract Amount	MBE/WBE Subcontractors	Participation Amount
Consulting Services State Emergency Management Agency	B700280	5	Experience, Reliability, & Expertise Cost	60 40	US Connect	90	\$40,000	None	\$0
Waste Tire Cleanup Services 15 Sites & 6 Regions	B600890	14 Total	See Below for Specific Areas						
Site 3, 12 Region KCRO, NERO, JCRO, SLRO SERO, SWRO			Cost Performance Methodolgy, Equipment, End Markets Experience, Reliability, & Experience	40 40 20	Tri Rinse	94.1	\$2,948	5.00%	\$143
Site 5	B600890		Cost Performance Methodolgy, Equipment, End Markets Experience, Reliability, & Experience	100	Tri Energy	90	\$2,020	None	\$0
Site 6, 14, 15, 16, 17, 18, 21, 22	B600890		Cost Performance Methodolgy, Equipment, End Markets Experience, Reliability, & Experience	100	MVE	80.2	\$4,515	None	\$0
Site 7	B600890		Cost Performance Methodolgy, Equipment, End Markets Experience, Reliability, & Experience	100	Tire Recyclers	66.73	\$316	None	\$0
Site 10	B600890		Cost Performance Methodolgy, Equipment, End Markets Experience, Reliability, & Experience	100	BFI	90.01	\$408	None	\$0
Site 23, 25	B600890		Cost Performance Methodolgy, Equipment, End Markets Experience, Reliability, & Experience	100	G&E Hualing	110	\$1,440	None	\$0

BID EXAMPLES

Office of Administration, Division of Purchasing & Management

Contract Type	Bid Number	Bidders	Selection Criteria	Possible Points	Firm	Points Received	Contract Amount	MBE/WBE Subcontractors	Participation Amount
Catering Services Informal Bidding	B700104	4	Cost	100	Boeseen Catering	100	\$29,211	None	\$0
Agricultural Tractors 4 Different Tractors	B700311	11	Cost	100	Schweissguth Bros., Inc. Henry Tractor, Inc.	100 100	\$55,881 \$83,354	None	\$0 \$0
Sampling System Soil Contamination	B700545	2	Cost	100	Geoprobe Systems	100	\$41,914	None	\$0
Telephone Survey Services	B700413	9	Cost Experience, Reliability, Expertise, & Method of Performance	50 50	The Gallop Organization	79.55	\$27,652	None	\$0
Professional & Technical Consultants For Future Services	B501752		See Below For Individual Specialties						
Financial Audit Consultant		12	Cost Experience & Reliability Expertise of Personnel Proposed Method of Performance Cost Effectiveness	40 20 20 20	Columbia Group Larkin & Assoc. Technical Assoc. Utilitech Inc.	74.94 91.29 77.09 95.86	\$95/hr. \$85/hr. \$68/hr	None	\$0
Rate of Return Consultant		11	Cost Experience & Reliability Expertise of Personnel Proposed Method of Performance Cost Effectiveness	100	Stephen Hill Ben Johnson Technical Assoc.	95.56 87.46 95.4	\$80/hr \$82/hr \$68/hr	None	\$0
Environmental Constraint Consultant		8	Cost Experience & Reliability Expertise of Personnel Proposed Method of Performance Cost Effectiveness	100	Economic & Tech MSB Energy Resource Insight Sierra Consulting Tellus Institute	86 78.53 63.73 55.07 88.05	\$68.75/hr \$71.80/hr \$95/hr \$88.33/hr \$72.29/hr	None	\$0

BID EXAMPLES

Office of Administration, Division of Purchasing & Management

Contract Type	Bid Number	Bidders	Selection Criteria	Possible Points	Firm	Points Received	Contract Amount	MBE/WBE Subcontractors	Participation Amount
Competitive Market Assessment		22	Cost Experience & Reliability Expertise of Personnel Proposed Method of Performance Cost Effectiveness	100	Bethesda Research David Chessler First Capitol City Scott Hempling Ben Johnson MSB Energy Whitfield Russel Sierra Consult Tellus Institute JW Wilson	79.87 85 59.98 69.82 72.46 62.86 69.36 62.38 83.19 67.32	\$66.67/hr \$60/hr \$129/hr \$175/hr \$82/hr \$105/hr \$117/hr \$88.33/hr \$67.38/hr \$126/hr	None	\$0
Strategic Resource Planning		15	Cost Experience & Reliability Expertise of Personnel Proposed Method of Performance Cost Effectiveness	100	Sheldon Bierman First Capitol City GDS Assoc. LCG Consult MSB Energy Resource Insight Sierra Consult Tellus Institute	93.16 76.22 87.03 90.5 77.4 77.4 79.7 96.6	\$110/hr \$126.25/hr \$103.50/hr \$105/hr \$78.17/hr \$95/hr \$88.33/hr \$68.44/hr	None	\$0
Actual Cost Adjustment Audit		10	Cost Experience & Reliability Expertise of Personnel Proposed Method of Performance Cost Effectiveness	100	Columbia Group First Capitol Group Tellus Institute	\$79.21 61.41 88.49	\$88.33/hr \$121.67/hr \$68.44/hr	None	\$0

BID EXAMPLES

Design and Construction

Contract Type	Project Number	Bidders	Selection Criteria	Firm	Contract Amount	MBE/WBE Participation	Participation Amount
Northwest Missouri Psychiatric Rehabilitation Center	09-650-93-0001(D)	4	Price MBE/WBE Participation	Walton Construction Co.	\$17,534,000	4.24%	\$744,059
Parking Lot Repair Mexico Veteran's Home	11-850-95-5020	3	Price MBE/WBE Participation	N-J Wilson Contracting	\$117,574	5.00%	\$10,000
Roof Replacements Central Missouri Correctional Center	30-942-96-0012(B)	4	Price MBE/WBE Participation	Watkins Roofing Inc.	\$246,000	100.00%	\$246,000
Above Ground Heating Loop Fulton Reception & Diagnostic Center	30-963-96-0030(B)	10	Price MBE/WBE Participation	Environmental Engineering	\$893,000	5.00%	\$92,840
Mechanical Repairs WMMHC And KCRC Building	09-650-95-0050(B)	4	Price MBE/WBE Participation	AD Jacobson	\$722,400	11.00%	\$79,464
Asphalt Roads, Parking Lots Marshall Habilitation Center	09-650-95-0080	3	Price MBE/WBE Participation	Coil Construction, Inc.	\$580,505	15.20%	\$87,456
Site Preparation Western Reception, Diagnostic Correctional Center	30-936-95-0083(B)	4	Price MBE/WBE Participation	Midwest Titan, Inc.	\$2,096,000	19.40%	\$407,248
New Armory And OMS Building and Related Facilities	11-837-90-0006(B)	4	Price MBE/WBE Participation	Huffman, Inc.	\$2,915,100	5.00%	\$150,000
New Reception Diagnostic Building Western Reception, Diagnostic Correctional Center	30-936-95-0084(B)	6	Price MBE/WBE Participation	Lawhon Construction Co.	\$23,292,000	10.10%	\$2,342,871

BID EXAMPLES

Department of Revenue, Missouri Lottery

Small/Medium Contracts

Contract Type	IFB #	Bidders	Selection Criteria	Possible Points	Firm	Points Received	Contract Amount	MBE/WBE
Courier Services	00161	6	Price MBE/WBE	100 15	Lanter Delivery Systems, Inc.	100	\$41,730	No
Shredders	00138	7	Price Quality of Proposals MBE/WBE	70 30 15	Marler Business Systems	67, 83.6, 84.4, 93.8, 95.97	\$124,391	No
CCTV Security System	00143	3	Price Quality of Proposals MBE/WBE	60 40 15	Security Technologies	102.2	\$12,508	MBE/WBE
Shrink Wrap/Packaging Machinery and Supplies	00144	15	Price Quality of Proposals MBE/WBE	50 50 15	Gulf Great Plains	146	\$16,615	No
Janitorial Services	00159	5	Price References MBE/WBE	70 30 15	Andrews Janitorial	105	\$14,700	MBE
Packaging Supplies (Shrink Wrap Film)	00151	8	Price Quality MBE/WBE	60 40 15	Packaging Solutions, Inc.	107.7	\$2,763	MBE
Packaging Supplies (Strapping Material)	00151	8	Price Quality MBE/WBE	60 40 15	Best Pack Corp.	99	\$3,700	MBE
Packaging Supplies (Kraft Paper)	00151	7	Price Quality MBE/WBE	60 40 15	Best Pack Corp.	111.7	\$3,700	MBE

BID EXAMPLES

Department of Revenue, Missouri Lottery

Large Contracts

Contract Type	IFB #	Bidders	Selection Criteria	Possible Points	Firm	Points Received	Contract Amount	MBE/WBE Participation
Pull-Tab Tickets	00132	4	Cost Experience, Expertise, Reliability Proposed Methods of Performance MBE/WBE Participation	60 15 25 15	Scientific Games Inc.	98.2	\$902,907	No
Lottery Online Gaming System	B60039	2	Cost Hardware, Software & Telecom. Proposed Method of Performance Experience, Expertise, Reliability MBE/WBE Participation	45 30 15 5 5	GTECH Corp.	92.28	3.52% Of Sales	Yes
Advertising Services	00085	7	Cost Creative Presentation Experience and Creative Ability Expertise and Resources MBE/WBE Participation	40 30 15 10 5	Bernstein - Rein	91.5	\$759,919	Yes
Scratcher Ticket Lottery Game	B300689	5	Cost Proposed Method of Performance Experience, Expertise, Reliability MBE/WBE Participation	60 20 15 5	Scientific Games, Inc.	96.1	\$5,742,290	Yes

APPENDIX C
Missouri's Shifting Racial Demographics

MISSOURI'S SHIFTING RACIAL DEMOGRAPHICS

Year	Total Population	Total White Population (Percent)	Black Population		
			Slave	Free Black	Total Black (Percent)
1803	10,340				1,320
1810	20,845	17,227	3,011	607	3,618
1820	66,586	54,903	9,797	376	10,173
1830	140,455	115,364	25,091	569	25,660
1840	383,702	322,295	57,091	1,478	58,569
1850	682,044	592,004	87,422	2,618	90,040
1860	1,182,012	1,063,489	114,931	3,572	118,503
1870					
1880					
1890					
1900	3,106,665	2,944,843			161,822
1910	3,293,335	3,134,932			157,452
1920	3,404,055	3,225,044			178,241
1930	3,629,367	3,403,876			223,840
1940	3,784,664	3,539,187			244,386
1950	3,954,653	3,655,593			297,088
1960	4,300,000	3,922,967			390,853
1970	4,675,501	4,177,495			480,172
1980	4,916,686	4,348,412			513,385
1990	5,117,075	4,486,850			546,850

